MONTANA LEGISLATIVE HISTORY

Chapter 158 1989

Bill H _____ S 157 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s) h	3/06	C	Hearing Date(s) h	1/26	C
v	3/06	C	v	1/31	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/11 TRANSMITTED TO GOVERNOR
3/15 SIGNED BY GOVERNOR
CHAPTER NUMBER 105 EFFECTIVE DATE: 10/01/89

SB 155 INTRODUCED BY CRIPPEN, ET AL.
RAISE AND INDEX CERTAIN JUDICIAL SALARIES

1/16 INTRODUCED
1/16 REFERRED TO JUDICIARY
1/17 FISCAL NOTE REQUESTED
1/20 FISCAL NOTE RECEIVED
1/20 FISCAL NOTE PRINTED
1/31 HEARING
DIED IN COMMITTEE

SB 158

SB 156 INTRODUCED BY HALLIGAN
REPEAL LAW THAT REQUIRES LABOR COMMISSIONER TO KEEP CHILD SCHOOL REPORTS
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/17 INTRODUCED
1/17 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/19 FISCAL NOTE REQUESTED
1/24 FISCAL NOTE RECEIVED
1/25 FISCAL NOTE PRINTED
1/26 HEARING
1/27 COMMITTEE REPORT--BILL PASSED
1/31 2ND READING PASSED 50 0
2/02 3RD READING PASSED 49 0

SB 159

TRANSMITTED TO HOUSE
2/21 REFERRED TO LABOR & EMPLOYMENT RELATIONS
3/07 HEARING
3/08 COMMITTEE REPORT--BILL CONCURRED
3/11 2ND READING CONCURRED 90 2
3/13 3RD READING CONCURRED 97 0

RETURNED TO SENATE
3/16 SIGNED BY PRESIDENT
3/16 SIGNED BY SPEAKER
3/17 TRANSMITTED TO GOVERNOR
3/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 241 EFFECTIVE DATE: 10/01/89

SB 157 INTRODUCED BY NATHE, ET AL.
CREATE STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF CHILDHOOD SEXUAL ABUSE

1/17 INTRODUCED
1/17 REFERRED TO JUDICIARY
1/26 HEARING
2/01 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/03 2ND READING PASSED 49 1
2/06 3RD READING PASSED 47 1

SB 160

TRANSMITTED TO HOUSE
2/21 REFERRED TO JUDICIARY
3/06 HEARING
3/06 COMMITTEE REPORT--BILL CONCURRED

3/08	2ND READING CONCURRED	85	11
3/09	3RD READING CONCURRED	82	12
	RETURNED TO SENATE		
3/14	SIGNED BY PRESIDENT		
3/14	SIGNED BY SPEAKER		
3/15	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 158 EFFECTIVE DATE: 10/01/89		

SB 158 INTRODUCED BY KEATING
REPEAL TAXES ON PERSONAL PROPERTY; PLACE CAP ON CERTAIN REAL PROPERTY TAXES EQUIVALENT TO 1 PERCENT OF MARKET VALUE

1/17	INTRODUCED		
1/17	REFERRED TO TAXATION		
1/18	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

SB 159 INTRODUCED BY BLAYLOCK
GENERALLY REVISE THE NEW HORIZONS ACT
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/17	INTRODUCED		
1/17	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/18	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
1/26	HEARING		
1/27	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/31	2ND READING PASSED	50	0
2/02	3RD READING PASSED	45	4
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED	91	1
3/13	3RD READING CONCURRED	91	6
	RETURNED TO SENATE		
3/17	SIGNED BY PRESIDENT		
3/17	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 251 EFFECTIVE DATE: 7/01/89		

SB 160 INTRODUCED BY BLAYLOCK
REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/17	INTRODUCED
1/17	REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/18	FISCAL NOTE REQUESTED
1/24	FISCAL NOTE RECEIVED
1/25	FISCAL NOTE PRINTED
1/26	HEARING

SENATE BILL NO. 157

INTRODUCED BY [illegible]

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF CHILDHOOD SEXUAL ABUSE; AMENDING SECTION 27-2-204, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-204, MCA, is amended to read:

"**27-2-204. Tort actions -- general and personal injury.** (1) ~~The~~ Except as provided in [section 2], the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

NEW SECTION. **Section 2. Tort actions -- childhood sexual abuse.** (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury or condition; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury or condition was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury or condition that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section.

NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 27, chapter 2, part 2, and the provisions of Title 27, chapter 2, part 2, apply to [section 2].

NEW SECTION. **Section 4. Severability.** If a part of

LC 0834/01

INTRODUCED BILL
SB 157

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies to all causes of action commenced on or after October 1, 1989, regardless of when the cause of action arose. To this extent, [this act] applies retroactively, within the meaning of 1-2-109.

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 26, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Jenkins, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None.

Staff Present: Valencia Lane, Legislative Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion: There was none.

HEARING ON HOUSE BILL 38

Presentation and Opening Statement by Sponsor:
Representative Ralph Eudaily of Missoula, District 60, opened the hearing. He stated that the purpose of this bill is to allow the University system retirement program as property that may be exempted in a bankruptcy proceeding. He said this bill would correct the law as was intended 2 years ago. It had been submitted incorrectly because of an oversight in the drafting of the previous bill. The bill would give the same benefits to employees of the University system as other state employees have, he said.

List of Testifying Proponents and What Group they Represent:

David Evenson, Montana University System

HEARING ON SENATE BILL 157

Presentation and Opening Statement by Sponsor: Senator Nathe, District 10, opened the hearing. He stated that the bill was to create a statute of limitations for civil actions to recover damages for injury suffered as a result of childhood sexual abuse. He asked that the discovery exception be applied to the sexual abuse case where there is intentional conduct on the part of the abuser. He pointed that there were amendments that needed to be considered. On page 2, line 4 after the word "injury", strike "or condition"; line 6, strike "or"; line 7, strike "condition"; and on line 10, strike "or condition". (See Exhibit 2).

List of Testifying Proponents and What Group they Represent:

Jean Kemmis, Parents Anonymous of Montana
Holly Franz, Women's Section of the State Bar
Leo Gallagher, Himself
Noel Larrivee Atty, Attorney, Children's Advocate
Brenda Nordlund, Montana Women's Lobby
Janet R. Allison, Ph.D, Herself
Dr. Hugh Black, Montana Psychological Association
Steve Waldron, Mental Health Centers
Megan Hill, Montana Catholic Conference
Tony Nickolas, Montana Education Association
Susan Swinehart, St. Peters Hospital
Holly Kalczezc, OPI
Georgina Park, Montana Committee for Prevention of Child Abuse and Child & Family Resource Council
Leslie Burgess, Herself
Elizabeth Williams, Herself
Bob Dozier, Himself
Susan Kraft Ball, Herself and family
Marti Adrian, Himself
Judy Langley, Herself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jean Kemmis, representing Parents Anonymous, stated "This statute amends section 27-204 to allow victims of child sexual abuse the opportunity to prove that discovery, to the statute of limitations that applies to these

cases. Under current law the statute of limitation would not apply in many cases. They presently begin at the age of 18, run for three years, and ends at age 21. The victim of child or sexual abuse must bring a civil action against the abuser before she reaches the age of 21 or she is forever barred from recovery, said Ms. Kemmis. As in the criminal section, this general statute of limitation is workable in circumstances where the abuser is a stranger to the child. In the situation where the abuser is a parent or step-parent, relative or close authority figure, it is not workable. In practice, the statue of limitation acts to bar victims' recovery of child or sexual abuse by keeping them out of the court. By doing this, it also acts to protect abusers from a natural responsibility for the enormous counselling expenses incurred by these victims. Of the two bills, criminal and civil, the civil is directly from the Supreme Court case, E & EW vs. DCH from 1987-88. In that case the court wasn't asked to apply the existing discovery. The court declined to do this, stating that the legislature holds prerogative on statute of limitations. The issue is whether these victims should be allowed access to the court. Abusers do not pay for counselling of long-term therapy that is necessary to the victim. This is due to the statute of limitations which does not take into account the victim's nature to conceal. If the committee concludes that it is unjust to continue those rules that victims cannot apply, then it is appropriate to grant them the best of the "discovery rule". This will allow them an opportunity to prove that it was caused by circumstances." (See Exhibit 3).

Holly Franz, representing Women's Section of the State Bar, pointed out that statute of limitations are designed to determine how long the court will remedy and remain available to an injured person. She felt 3 years was a fair time period for the court to remain available because, after a period of time, the witness may not remember what happened and the evidence of that injury would have healed. She felt the concept of fairness supported extension of the doctrine to survivors of sexual abuse. The discovery doctrine would allow claimants to bring a civil action after discovery of the injury.

Leo Gallagher, representing himself, stated that the problem concerning child and sexual abuse of the generational nature tends to repeat itself time after time. As a

Deputy County Attorney, he thought that the committee should realize the great difficulty in a criminal case, because the offender has the right to silence. He believed that giving the victim of the crime a fighting chance to civil courts would open up the chance for the victim to obtain justice. The judicial system will find justice in the person who committed the injury and will pay for their act, he stated. These injuries are not only expensive to the victim, but to society itself. He asked for their support.

Noel Larrivee, representing Children's Advocate, stated that a 28 year old woman, who was prosecuted in Missoula County for 4 counts of arson, had been seriously abused as a child. The first time she attempted suicide by drinking Drano at 10 years old of age. He said that the abuse performed by this woman's mother on her was extended over a period of 10 years (Refer to the book Sybil). Another more recent case involved a 9-year-old girl. She, too, was involved with her mother and was sexually assaulted. He felt that this might be difficult to believe, but the mother tied her child's arms to the bed posts, and told her that this was what her grandfather did to her and was going to share her experience with her. In each of those incidents, the 28-year-old woman was prosecuted by the county and was incarcerated for nine months. The younger girl went through a period of counselling for two years duration. Her father, who ultimately took custody of the child, had to take an second job in order to afford the counselling that this young girl desperately needed. When you look at the cost, she said, you need to look at either prevention or the deterrent effect. He solicited support of SB 157.

Brenda Nordlund, representing the Montana Women's Lobby, stated that she was in support of SB 157. (See Exhibit 4).

Dr. Janet Allison, Ph.D., representing herself, stated that she supported SB 157. (See Exhibit 5).

Hugh M. Black, Ph.D., representing the Montana Psychological Association, stated that the association supported extending the statute of limitations for recovery of actual damages caused by sexual abuse of minors for reasons of justice and equity. (See Exhibit 6).

Steve Waldron, represented the Montana Mental Health Centers. He pointed out that the Montana Residential Town and Home Association would like to take a position in favor of SB 157. The offenders tend to offend over and over again, he said. He felt it would be advantageous to the abused to extend the criminal statute of limitation in order to prevent further abuse and appropriate treatment. This bill addressed the needs of the offenders as well as the abused, he said. The cost of this treatment is quite high, but victims of child and sexual abuse don't respond without at least short-term therapy. He also wanted to point out that, requiring the offender to pay the cost of the damage is a therapeutic issue, in addition to a moral or ethical issue. The offenders respond better when they are forced to pay for that treatment and the treatment of the victims. He urged a Do Pass on SB 157.

Megan Hill, represented the Montana Catholic Conference. She stated she would like the committee to support SB 157. (See Exhibit 7).

Tony Nickolas, represented MEA. She wanted to be on record in support of SB 157.

Susan Swinehart, represented St. Peters Hospital. She stated that she was in support of SB 157.

Holly Kaleczezc, represented OPI. She felt that the circumstances surrounding sexual abuse of children indicated an unusual civil statute of limitations. She urged support of SB 157.

Georgina Park, represented Child and Family Resource Council and the Montana Community for Prevention of Child Abuse. She stated that her organization was comprised of nine local councils. The Montana Community for Prevention of Child Abuse feels there needs to be more effort made towards prevention of child abuse. They understand the budget restraints the legislature is working under, she said, and urged the committee to support SB 157.

Leslie Burgess, represented herself and appeared as a proponent. She said she was a survivor of incest (See Exhibit 8).

Elizabeth Williams, represented herself, giving written testimony to the committee. (See Exhibit 9).

Bob Dozier, represented himself and his wife. He stated that his wife was in counseling for five years, but did not start until she was 30 years old. Until she had counselling, she did not realize that she actually had a feeling of hate, resulting from being an abused child. Up until that point in her life, she always thought she was part of the problem. It wasn't until the five years of counseling that she began to realize the importance of identifying and dealing with her problems. He said he still had the financial burden of the five years of counselling and expected that she would need two more years. He felt the bill would not help them, but was necessary to help others. He said he would like to see all of the dollars that are spent each year on therapy for abused children. The people paying for the therapy are not the ones who should be paying, he said. (See Exhibit 10).

Susan Kraft Ball, represented herself. (See Exhibit 11).

Marti Adrian, represented herself and urged passage of the bill.

Judy Langley, represented herself and appeared as a proponent.

(Exhibits 12 through 20 were left with the committee to be placed in the record.)

Questions From Committee Members: Senator Mazurek stated that Jeanne Kemmis would like the "language or condition" deleted in the amendment, and asked what its significance was.

Jeanne Kemmis replied that the amendment was suggested by Kimberly Kradolfer who had some questions about whether the state would be liable under this bill. There was also a concern about the term "more condition". The injury or condition language is the language which is used in the Washington bill, she said. When the bill was originally drafted, only the term "injury" was used. The legislative council included the two words and Kimberly thought that the words "or condition" might allow the splitting of cause of actions. She

stated that they had no problem withdrawing the suggested language.

Senator Halligan asked Jeanne Kemmis if the insurance would still be liable.

Jeanne Kemmis replied that most insurance would, in most policies, not cover intentional acts. For that reason in the first sentence of the bill, we included, specifically, that the bill would only apply to the intentional act which followed the Washington model.

Senator Pinsoneault stated the Crime Victim's Compensation Act is very successful, and wondered why the victims didn't follow the scope of that act.

Jeanne Kemmis replied that she was not familiar with that funds, but it does involve public funds. She felt the abuser should pay for the pain caused.

Allison stated that she used the Crime Victim's Compensation act many times in working with child victims of sexual abuse. Limitations which are placed on that money require that it be a case that can be prosecuted. It has to fall under the statute limitations for criminal prosecution: Five years or at least five years of the report being made.

Senator Pinsoneault asked why we don't amend the scope of this act to include these victims, rather than wasting time on civil actions.

Janet Allison was aware of the amount of money in the fund, and knew that it was extremely limited.

Senator Pinsoneault asked if there was an identifiable age where a child simply does not fabricate.

Janet Allison stated that most kids don't fabricate. She thought it was a rare case where they did fabricate and it was usually because they felt they were in danger and couldn't do anything else. They are in danger psychologically and physically.

Senator Pinsoneault asked John Madsen from Family Services if the department had a position on this bill.

John Madsen replied that the department would support anything that would help recovery.

Senator Pinsoneault asked Noel Larrivee if the mother, who was discussed in earlier testimony, had ever been charged with her abuse.

Noel Larrivee stated that the mother was diagnosed as schizophrenic and was hospitalized. Her case was never prosecuted because of the extent of her mental disability that she suffered.

Senator Mazurek asked Jeanne Kemmis if she had heard the proposal by Susan Swinehart to change the time period to five years.

Jeanne Kemmis replied that those proposals would expand the bill beyond what had been asked, she said. Regarding the term "recently discovered", she stated that the courts would probably apply it implicitly in terms of the number of years of the statute of limitations. She believed that it was needed to keep up with the general rules.

Senator Mazurek asked Jeanne Kemmis had looked at the retroactive applicability of this bill.

Jeanne Kemmis replied that they originally had looked at the possibility of retroactive application that would allow people who have discovered longer than three years ago to come under a grandfather clause of some sort and decided not to pursue that approach. In this approach only the people who have discovered within the last three years will be allowed.

Senator Jenkins stated that he would like to censor the news media over the last bill. He felt that the media should not have included the witnesses' names.

Senator Beck asked if this bill could be used to convict a person who committed the crime or could it be used against the mother who knew of the crime but didn't stop it.

Jeanne Kemmis replied that limiting the effect of the action would only be intentional acts. He didn't believe there would apply to a spouse would allow abuse to continue.

Senator Beck asked if there was abuse in that area as well.

Jeanne Kemmis replied that there is and she thought that it was a judgement call.

Senator Crippen asked if this bill used the language was the same as in the Washington statute.

Jeanne Kemmis replied that it was the same language as in the Washington statute. She stated that they were told that the bill was not intended to apply to the negligence of omission of the spouse. It was Washington's opinion that the extension would not apply to the omission to act.

Closing by Sponsor: Senator Nathe closed.

DISPOSITION OF SENATE BILL 164

Discussion: Senator Crippen stated that there would be discussion on SB 164.

Valencia Lane stated that the amendments to be discussed are: 1. Senator Yellowtail (See Exhibit 21). 2. Senator Mazurek and others (See Exhibit 22). 3. Senator Jenkins (See Exhibit 23). 4. Senator Rasmussen's amendments. (See Exhibit 24). 5. Montana Trial Lawyers Association amendments (Exhibit 25). She also stated that there was a mock gray bill including Senator Mazurek's amendments (Exhibit 26) and a mock gray bill containing Senator Rasmussen's amendments (Exhibit 27).

Senator Yellowtail called the committee's attention to page 3 line 7 of his amendments regarding the matter of the understanding of the minor pertaining to the abortion. (See Exhibit).

Valencia Lane stated that Senator Jenkins' first amendment, page 1, line 17 would have the effect of requiring notification of one parent only, and not both parents. The second amendment is to correct what appears to be an oversight in the bill where an appeal can be perfected from the lower court decision to the Supreme Court, which was an oversight in the Missouri law as well. Both amendments are addressed in the Mazurek and

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EXHIBIT NO. 2
DATE 1-26-89
BILL NO. SB 157

Amendments to Senate Bill No. 157
First Reading Copy (WHITE)

Requested by Senator Nathe
For the Committee on Judiciary

Prepared by Valencia Lane
January 24, 1989

1. Page 2, line 4.
Following: "injury"
Strike: "or condition"

2. Page 2, lines 6 and 7.
Following: "injury" on line 6
Strike: the remainder of line 6 through "condition" on line 7

P.2 line 4 & 10
F: "injury"
S: "or condition"

Submitted by Jeanne Kemmis
Parents Anonymous of Montana
Missoula, MT

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 1-26-87
BILL NO. SB 157

MEMORANDUM IN SUPPORT OF LEGISLATION APPLYING THE DISCOVERY RULE TO CIVIL SUITS BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

I. Purpose of the Legislation

The discovery rule states that a statute of limitations does not begin to run until a plaintiff discovers or through the use of reasonable diligence should have discovered that he or she is injured and that the injury was caused by the defendant's misconduct. The civil bill applies the discovery rule to tort cases brought by adult survivors of childhood sexual abuse.

II. Facts

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. Brozan, Helping to Heal the Scars Left by Incest, NY Times, Jan. 9, 1984, at B2, col. 6. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145, (1983). There is virtually unanimous agreement that sexual abuse is the fastest growing form of reported child abuse. K. MacFarlane & J. Waterman, Sexual Abuse of Young Children 5 (1986). The vast majority of investigated reports prove valid. R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 178 (1983).

Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 18. See, M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982). The duration of the abuse, however, may cause age estimations to be artificially high because the age listed as the age of abuse is almost always the victim's age at the time a report is made, and sexual abuse often begins long before it is reported. See K. MacFarlane & J. Waterman, supra at 7. Many experts believe that most child victims of sexual abuse were less than 8 years old at the time of initiation. See, e.g., R. Summit, supra at 178.

The abusers are usually family members, friends, and neighbors, and they are predominantly male. D. Finkelhor, Sexually Victimized Children 73-75 (1979). Traditionally, girls were believed to be

sexually abused far more often than boys. S. Butler, Conspiracy of Silence: The Trauma of Incest 5 (1978) (citing V. DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults 56, 66 (1969) (study concluding that 97% of offenders are adult males and 87% of child victims are females)). Recently, it has emerged that boys are abused much more frequently than previously believed. Surveys of child molesters (who are predominatly male) have demostrated that as many as 85% of them were themselves abused as children. K. MacFarlane & J. Waterman, supra at 9-10.

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. S. Butler, supra at 12-13. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. R. Summit, supra at 181. Physical violence and/or the threat of physical violence, threats of harm to the victim's siblings or mother, the threat of abandonment or separation, and other psychologically coercive tactics used by the abuser result in the child becoming virtually incapable of disclosing the abuse. M. de Young, The Sexual Victimization of Children 41 (1982). Moreover, many of the victims are simply too young to be able to communicate effectively the abuse, or may be unaware that the behavior is anything unusual or inappropriate. K. MacFarlane & J. Waterman, supra at 5-7. In any event, children who do break this silence are rarely believed. M. Kirkpatrick, supra at 128-29.

The adult expectation that victims of abuse will exercise self-protection and immediately disclose the abuse ignores the inherent authority of the adult and the corresponding helplessness of the child. R. Summit, supra at 182-84. The fact that the abuser is often in a trusted and apparently loving position only increases the child's helplessness and powerlessness.[1] "Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence." Id. at 183.

If the child does not seek or receive immediate intervention and protection, the child's only option becomes accommodating to the reality of continuing sexual abuse. The child faced with continuing abuse somehow must achieve a sense of control. He or she cannot safely conceptualize a parent as bad because to do so is tantamount

[1] A typical reaction of child victims is "to play possum," that is to feign sleep, to shift position, and to pull up the covers. Small creatures simply do not call on force to deal with overwhelming threat. Where there is no place to run, they have no choice but to try to hide." R. Summit, supra at 183.

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to abandonment. [2] Thus, the only acceptable option for the child becomes assumption of responsibility for the abuse. R. Summit, supra at 184-86. this "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanixm that often leads to self-destructive and other destructive behaviors. Id. For example, a study of 195 female clients of a community mental health center found that 54.9% of the survivors of childhood sexual abuse reported previous suicide attempts, as opposed to 22.6% of nonvictims. The study further found that 92.9% of the women whose first suicide attempt occurred before age 13 were victims of childhood sexual abuse, and 87.2% of those whose first attempt was during adolescence were childhood sexual abuse victims. J. Briere & M. Runtz, Suicidal Thoughts and Behaviors in Former Sexual ABuse Victims, 18 Can. J. Behavioral Sci. 413 (1986).

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many years. E.S. Blume, The Walking Wounded: Post-Incest Syndrome, 15 SIECUS Report 5 (1986).

> Many, if not most, survivors of child sexual abuse develop amnesia so complete that they simply do not remember that they were abused at all; or, if they do remember, they minimize or deny the effects of the abuse so competely that they cannot associate it with any later consequencs. They are the "walking wounded," functional adults who bear, often secretly, lifelong pain and impaired emotional functioning.

Id. (emphasis in original). One study of 53 female outpatients participating in therapy groups for incest survivors determined that 64% of the patients studied did not have full recall of the sexual abuse but reported some degree of amnesia, and 28% of the women reported severe repression. J. Herman & E. Schatzow, Recovery and Verification of Memories of Childhood Sexual Trauma, 4 Psychoanalytic Psychology 1, 4 (1987). For most victims, it takes years to come to

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[2] This process is described as a "vertical split in reality testing:"

> If the very parent who abuses and is experienced as bad must be turned to for relief of the distress that the parent has caused, then the child must, out of desperate need, register the parent--delusionally--as good. Only the mental image of a good parent can help the child deal with the terrifying intensity of fear and rage which is the effect of the tormenting experiences. The alternative--the maintenance of the overwhelming stimulation and the bad parental image--means annihilation of identity, of the feeling of the self. So the bad has to be registered as the good. This is a mind-splitting or mind-fragmenting operation.

R. Summit, supra at 184 (quoting Shengold, Child Abuse and Deprivation: Soul Murder, 27 J. Am. Psychoanalytic Ass'n 539 (1979) (emphasis in original)).

terms with the emotional injuries brought on by the sexual abuse. J. Herman, Father-Daughter Incest 177 (1981).

As a victim of childhood sexual abuse becomes an adult, he or she will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their nonvictimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. A. Browne & D. Finkelhor, Initial and Long-Term Effects: A Review of the Research in D. Finkelhor, ed., Child Sexual Abuse: New Theory and Research, 143, 152-163 (1984). Difficulty in trusting others and sexual maladjustment are additional long-term effects reported by empirical researchers. Id. A childhood sexual abuse survivor might have partially or completely repressed the memory of the abuse, but the trauma might nevertheless be reenacted in nightmares, "flashbacks," and periods of disassociation. J. Herman, D. Russell, & K. Trocki, Long-Term Effects of Incestuous Abuse in Childhood, 143 Am. J. Psychiatry 1293 (1986).

A victim of childhood sexual abuse often denies injury as a coping response, and the shame, self-blame, and secrecy associated with childhood sexual abuse often inhibit a victim's understanding of its effects. See R. Summit, supra at 186-190. The accommodation process, in which the child has assumed responsibility for the abuse and internalized his or her feelings of rage and anxiety, often make victims incapable of discovering their injuries for many years. A genuine understanding of the extent and cause of the injuries sustained by a survivor of childhood sexual abuse is unlikely to be developed until the survivor receives mental health treatment. J. Herman, Father-Daughter Incest, supra at 177-196.

III. Legal Remedies

The criminal justice system has been largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction has been remote. See V. DeFrancis, supra at 187-191. One expert has estimated that conviction rate for childhood sexual abuse at 1% of all cases. D. Russell, The Secret Trauma 86 (1986). Consequently, for many survivors of childhood sexual abuse, civil redress is the primary available form of legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutues of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

When addressing the statute of limitations problem two years ago, the Washington Supreme Court, in a 5-4 decision, declined to apply the discovery rule to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). A strong dissenting opinion discussed the necessity for application of the discovery rule in these cases. 107 Wn.2d at 80-

94. The dissent pointed out that the purpose of the discovery rule is:

> to provide an opportunity for an adult who claims to have been sexually abused as a child to prove not only that she was abused and that the defendant was her abuser, but that her suffering was such that she did not and could not reasonably have discovered all the elements of her cause of action at an earlier time. The policy behind providing this opportunity has been demonstrated: the nature of child sexual abuse . . .is often so secretive, so humiliating, and so devastating that a victim typically represses the events until the abuse is "discovered" -- often through psychotherapy, and often well into adulthood.

107 Wn.2d at 93-94 (emphasis in original). The concurring opinion to the majority's decision noted the strength of the dissent's arguments, but stated that "[t]his is the exclusive province of the legislature, and the judiciary must not invade it." Id. at 80.

In March, 1988, the Washington Legislature elected to act within its province for establishing statutes of limitations and adopted legislation specifically applying the discovery rule to civil suits involving sexual abuse of children. Under Washington law, suits seeking damages for injury suffered as a result of childhood sexual abuse must be commenced within three years of the act of abuse allegedly causing injury or within three years of the time the victim discovered that the injury was caused by the abuse, whichever period expires later.

The Montana Supreme Court also was asked recently to apply the discovery rule to civil cases involving sexual abuse of children in the case entitled E. and D.W. v. D.C.H., 754 P.2nd 817 (1988). Like the Washington Supreme Court, the Montana Court found that "(w)hile this Court is aware of the horrifying damage inflicted by child molesters, it is not for us to rewrite the statute of limitations to accommodate such claims through judicial fiat. Such a task is properly vested in the legislature." (Emphasis added). Id. The civil statute of limitations bill proposed to the 1989 Montana Legislature is modeled after Washington law and asks the Legislature to act within its vested authority to establish, as did the Washington Legislature, an appropriate discovery rule exception to the statute of limitations in cases involving sexual abuse of children.

IV. Application of the Discovery Rule

Traditionally, statutes of limitation begin to run on the date of the wrongful act or omission which is the basis of the plaintiff's claim. Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev . 1177, 1200-02 (1950). In instances where injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff learns or in the exercise of reasonable care and diligence should

have learned of the wrongdoing. Johnson v. St. Patrick's Hospital, 148 Mont. 125, 417 P.2d 469, 473 (1966).

In determining whether to apply the discovery rule, courts traditionally have balanced the possibility of stale claims against the unfairness of precluding meritorious causes of action. Grey v. Silver Bow County, 149 Mont. 213, 425 P.2d 819, 821 (1967).

Montana's substantial body of case law applying the discovery rule has been explicitly approved by the State Legislature. In 1987, the Legislature amended Section 27-2-102 of the Montana Code to read in part as follows:

> (3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered, or, in the exercise of due diligence, should have been discovered by the injured party if:
>
> (a) the facts constituting the claim are by their nature concealed or self-concealing; or
>
> (b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The psychological trauma associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

The public policy considerations underlying use of the discovery rule clearly support its appliction in cases involving childhood sexual abuse. The discovery rule, for example, is often applied in breach of trust cases. Skierka v. Skierka Bros. Inc., 629 P.2d 214, 218 (Mont. 1981). The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Moreover, the legitimacy of a child's trust in and reliance on his or her family members historically has been recognized by the courts and legislatures. See Salten, supra at 209.

Similarly, the discovery rule applies to fraudulent concealment claims. Monroe v. Harper, 164 Mont. 23, 518 P.2d 788, 790 (1974); Keneco v. Cantrell, 174 Mont. 130, 136, 568 P.2d 1225, 1228 (1977). And surely an adult's failure to disclose to the child essential information about a child's rights and limits on the adult's rights--or plain deceit on these matters--may be treated as a fraud upon that child. See Salten, supra at 210-11.

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DATE 1-26-88
BILL NO. SB 214

As stated more fully above, it is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. See E.S. Blume, supra at 5. In any case, most victims will be unable to connect their injuries with the abuse for many years. Id. Moreover, injuries related to childhood sexual abuse often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfuntion, all of which are unlikely to manifest themselves clearly until adulthood. M. Tsai, S. Feldman-Summers & M. Edgar, Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women, 88 J. Abnormal Psych. 407, 414 (1979). Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. M. Salten, supra at 202.

Discovery of the cause of a childhood sexual abuse survivor's injuries can also take years. Many victims are convinced that they are to blame for the abuse. See M. de Young, supra at 41. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. See Urie v. Thompson, 337 U.S. 163, 170 (1949). That concept is clearly relevant in childhood sexual abuse cases. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim thus is "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victm's trauma, and should not be permitted to profit from the fact that discovery of the cause of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Surviviors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 191, 217-18 (1985). Civil suits act as deterrents to unacceptable behavior. The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

V. Conclusion

If the traditional statute of limitations "date of wrongful conduct" rule is applied to civil suits brought by adult surviviors of childhood sexual abuse, we effectively deny these plaintiffs a remedy. The discovery rule clearly is appropriate in these cases; application of the rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run unti the plaintiff's injuries, and the fact that they were caused by the abuse, are discovered or should have been discovered by the plaintiff. The latent nature of many of the injuries and the time required to discover their cause, as well as the offender's role in coercing the child's silence, make application of the discovery rule essential in intentional tort suits alleging injuries resulting from

childhood sexual abuse. Indeed, these cases are perhaps the most compelling examples of the need for the discovery rule. Legislative action is essential to provide survivors of childhood sexual abuse with a genuine and meaningful legal remedy.

Adapted from a paper by Jana Mohr

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 1-26-89
BILL NO. SB 157

P.O. Box 1099 Helena, MT 59624 406/449-7917

Mr. Chairman, members of the committee,

My name is Brenda Nordlund and I appear on behalf of Montana Women's Lobby in support of SB 157.

Our support is based, in part, on the following factors:

1. The Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. The psychological associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

2. Public policy considerations underlying the use of the discovery rule support its application in cases of this nature. Analogy can be drawn to causes of action involving "breach of trust" and "fraudulent concealment", where the discovery rule is applied in Montana. [See, Skierka v. Skierka Bros. Inc., 629 P.2d 214, 218 (Mont., 1984), Monroe v. Harper, 164 Mont. 130, 136, 518 P.2d 788, 790 (1974); and Keneco v. Cantrell, 174 Mont. 130, 136, 568 p.2d 1225, 1228 (1977)]

The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Likewise, drawing comparision to fraudulent concealment cases, an adult's failure to disclose to the child essential information about a child's rights and limits on the adult's rights--or plain deceit on these matters--may be treated as a fraud upon that child.

Secrecy is a common thread in these causes of action, and is equally prevalent in childhood sexual abuse cases.

3. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. that concept is clearly relevant in childhood sexual abuse cases. [See, Urie v. Thompson, 337 U.S. 163, 170 (1949)]

It is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. Most victims will be unable to connect their injuries with the abuse for many years. Injuries related to childhood sexual abuse often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves slearly until adulthood. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed.

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Discovery of the cause of a childhood sexual abuse survivor's injuries can take years. Many victims are convinced that they are to blame for the abuse. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim is thus "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of action of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

4. Finally, and perhaps most importantly, no public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. Civil suits act as a deterrents to unacceptable behavior. Our hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

Survivors of childhood sexual abuse deserve an opportunity to present their cause of action. SB 157 will afford them that opportunity. We urge a do pass recommendation for SB 157.

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 1-26-89
BILL NO. SB 157

S.B. 157

I am Janet R. Allison, Ph.D., a licensed psychologist from Missoula. I am here to testify on behalf of S.B. 157, based on my past decade of intensive work with child sexual abuse victims, offenders, families, and adult survivors. As you may know, in the past ten to fifteen years professionals and the general public have increasingly come to recognize the scope of this problem. Researchers have found that at least 33% of girls,and at least 20% of boys, are sexually abused by the time they reach adulthood.

The long-term effects of child sexual abuse on victims are devastating, and often require extensive psychotherapy. Although the need for psychotherapy is caused by the abuse, survivors almost never receive compensation for therapy expenses from their offenders. Their failure to demand such compensation (by filing a lawsuit by the age of 21) is caused by limitations that are beyond their control, because of the psychological realities that are part and parcel of the experience of child sexual abuse. These are the psychological realities that would be explained in detail in front of a jury, if S.B. 157 were to become law and if a survivor were filing suit. I will attempt to outline them only briefly for you here.

From my experience as a clinician dealing with sexual abuse cases, and from the body of literature regarding the effects of such victimization, it is clear that there is a constellation of symptoms that generally result from sexual abuse by a trusted authority figure. Often some or most of these symptoms are latent until well into adulthood--that is, they don't appear or don't develop their full intensity until the survivor is grappling with adult stresses such as marriage, raising children, etc. These long-term negative effects include: chronic depression, low self-esteem, chronic irrational guilt, suicidal and other self-destructive thoughts and behaviors, inability to trust, lack of assertiveness, difficulty with intimate relationships, sexual problems and dysfunctions, disassociation of self from experience, recurrent nightmares, flashbacks to the abuse, disproportionate negative reactions to certain persons and events, eating disorders, alcohol and drug abuse, promiscuity, involvement in prostitution, the tendency to be revictimized, and the tendency to victimize others.

Although the victim/survivor of child sexual abuse suffers more and more from these increasingly chronic symptoms, she or he has no way to connect them with the earlier experience of sexual abuse, without some form of expert input. This

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usually occurs through work with a psychotherapist who can point out the connections, or sometimes through magazine articles, TV shows about sexual abuse, public presentations by experts, etc. But without education from an outside expert source, no one would recognize that a group of several of these symptoms strongly suggests the likelihood that child sexual abuse is the cause--and, prior to the past fifteen years, no one did recognize that connection.

Sexual abuse survivors have specific impairments that make them even less likely to connect their symptoms with their history of sexual abuse. First, the secrecy , which surrounds the abuse and is imposed by the offender (and which I described in testimony for S.B. 122), ensures that the victim has no perspective on the sexual contact except for what the offender communicates--often that it is "normal" and good, rather than destructive to her. Second, the inherent authority of the offender, and his position of trust, puts the child in a terribly helpless, powerless position. Unless someone somehow intervenes and offers protection for victims, they are forced, for their own survival, to find ways to accommodate to the ongoing abuse.

The "child sexual abuse accommodation syndrome," first described by R. Summit in 1983, revolves around the victim's need to cope with the contradiction between what the perpetrator is supposed to be (good, loving, trustworthy) and what he is doing (which is painful, confusing, and bad). The healthy, normal child who is subjected to this ongoing contradiction accommodates by viewing the perpetrator as good, to avoid the emotional devastation of experiencing an essential caretaker as bad. And so the only acceptable option for the victim is to assume responsibility for the abuse. Naturally, this leads to many of the symptoms that I have already listed--the rage over the victimization is suppressed and internalized, leading to self-hatred and self-destructiveness. Victims not only behave in various self-destructive ways, but come to feel guilty about everything bad that happens in their lives. Thus, they assume that their many problems are somehow their own fault, and have not the slightest understanding that those problems were caused by the offender's behavior.

What is more, accommodation to the intolerable anxiety, pain, and confusion of sexual abuse often includes actually repressing the memory of the abuse altogether. Many survivors of sexual abuse develop amnesia so complete that they simply do not remember that they were sexually abused at all; others remember only one or a few incidents out of the years of abuse they endured. Obviously, until survivors recover their memory of the abuse (often many years later, with the help of a psychotherapist who suspects sexual abuse may be the cause of their constellation of symptoms), they have no way of seeking compensation for its effects.

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Even if, somehow, a young survivor of sexual abuse discovered the nature of his or her injuries and their causes in time to file a lawsuit by the age of 21, the chances of the suit actually being filed are probably nil. I have only seen one survivor in all of my experience who reached the point of even considering bringing suit against her offender at the age of 21. (In this case, the offender had been only a temporary member of her family.) This young woman certainly did not have the psychological strength to follow through with taking such action. Adolescents and young adults are still too immature and too emotionally attached to their families to be capable of this type of action against family members or close friends. In my professional opinion, I would estimate that less than five percent of incest survivors could, mentally and emotionally, even consider filing a lawsuit against their offenders by the age of 21; I doubt that any would be capable of actually filing and following through with such a suit by that age.

In fact, very few survivors of any age would actually file lawsuits against their offenders. Bringing suit against a family member or close friend brings tremendous stigma, family and social disruption, and pain to the plaintiff, especially when sexual contact is involved. The long, hard process of carrying such a lawsuit to completion would demand emotional reserves and resilience beyond what many sexual abuse survivors have, even after extensive psychotherapy.

In sum, the psychological realities that survivors of child sexual abuse endure make it impossible for them to discover the cause of their increasingly severe and chronic problems unless they receive expert input, which usually comes in the form of psychotherapy years into adulthood. In order to deal with the effects of their abuse, survivors often need extensive psychotherapy, the cost of which is an overwhelming burden for them. S.B. 157 would allow the possibility for a small percentage of survivors to seek compensation from those who are responsible for the injuries. In the vast number of sexual abuse cases in which criminal prosecution cannot occur, this would create one other way for us as a society to communicate that we hold child molesters responsible for their crimes against children. I urge you to support this important legislation.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 1-26-89
BILL NO. SB 157

Testimony in Support of S.B.157

Testifying: Hugh M. Black, Ph.D., Licensed Clinical Psychologist in private practice in Helena, MT

Representing: Montana Psychological Association

The Montana Psychological Association supports extending the statute of limitations for recovery of actual damages caused by sexual abuse of minors for reasons of justice and equity. It is well documented that children find it psychologically difficult to report sexual abuse in the best of circumstances because they frequently believe it is their fault, and when they do report it they are often not believed. Clinicians frequently report the debilitating effect on adults of their childhood sexual exploitation and the difficulty they have working through the trauma sufficiently to be able to go on with their lives. Frequently they are so damaged that their inner conflicts preoccupy them to the point that they are emotionally unable to support themselves and are receiving State assistance. In cases where the exploitation can be proven, this bill would shift the costs of treatment from the State (Medicaid) to the assailant. Furthermore, sexual molestors frequently continue their behavior under the hope that they will never be exposed. This bill may provide some deterrence to those predators who are capable of anticipating the future, in the knowledge that they may some day be required to make restitution.

Most people think of sexual abuse as involving young girls, but there are an increasing number of young men who are now reporting sexual abuse that occurred when they were children. In our culture it is much more difficult for male juveniles or adolescents to report this exploitation due to societal shame, as well as the reasons females find it difficult. Boys believe frequently that the exploitation happened to them because there is something abnormal about them, rather than the predator.

The Montana Psychological Association urges this committee and the Senate to pass this bill to further protect those citizens who need special protection, and to provide some opportunity for just redress to those who have been exploited when they were helpless. Often, the capacity to obtain redress can aid mightily in allowing an emotionally disabled person become a productive member of society.

Hugh M. Black, Ph.D.
Licensed Clinical Psychologist
License # 133 (Montana)

SENATE JUDICIARY
EXHIBIT NO. 7
1-26-89
BILL NO. SB 157

Montana Catholic Conference

January 26, 1989

CHAIRMAN CRIPPEN AND THE SENATE JUDICIARY COMMITTEE

I am Megan Hill, representing the Montana Catholic Conference.

Members of the church's clergy often deal with both sides of the child abuse issue--the abused as well as the abusers.

It is important to realize that this is an intergenerational problem; those abused often repress the feelings about their own experiece, later abusing their own children. The costs of counseling to help break this vicious cycle are often very burdensome and may continue for years. However, if damages were available in child abuse cases, the chain of continued sexual abuse of children would have a chance at being broken.

We strongly urge your support of SB 157.

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SENATE JUDICIARY
EXHIBIT NO. 8
DATE 1-26-89
BILL NO. SB157

Leslie Burgess
Missoula, MT

SB 157

My name is Leslie Burgess. I am a survivor of incest. I had a complete memory block until I was 32 about the incest that I experienced between the ages of 4 to 7. I did not remember what had happened to me. When I was 32 I sought therapy because I was depressed and suicidal and very concerned about my inability to form or maintain intimate relationships. It was after nearly a year of therapy that I started to recall my memories. I believe that it became safer to remember because I was older, far away from the situation in time and space and had the support of my therapist. Remembering enabled me to finally work through the pain and begin the long healing process.

I now remember the abuse as starting when I was four. The last incident of abuse that I remember was when I was seven. During that time period, I was fondled, masturbated upon and forced to "perform" oral sex. I had my privacy invaded when I was bathing and when I was sleeping as well as at other times. I was told that if I told anyone, my younger brother would die. I was four years old and I believed it.

As a young adult I abused alcohol, drugs and food and I was very sexually promiscuous. I suffered a long-term depression and made two suicide attempts between the ages of 18 and 25. I had extremely low self-esteem and I was in a brutal battering relationship for almost four years. I didn't remember at that time that I had been sexually abused as a child and it wasn't until I was 32 and in therapy that I realized that my problems were a result of the childhood sexual abuse I had experienced.

At this point I have a tremendous time, energy, and monetary investment in healing so that I can realize some of my potential as a contributing member

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of society. It would be appropriate for the abuser to bear the financial burden, at least, of the cost of my therapy. However, to use the court system to allow me to do so is impossible for me because of the statute of limitations. I had no memory of the incest until I was 32 but the current law requires me to have taken action by the time I was 21. Blocked memory is certainly a factor that needs to be taken into account in reassessing the law in regard to the statute of limitations because it makes impossible the option of pursuing civil suit until such time that memory is recalled.

I hope that you will consider that the discovery rule is applicable to incest. For someone in my position, this addition would be the only way that I could recover damages for the cost of therapy from my abuser at the time that it was possible for me to do so - when I was an adult and after I recovered my memory and connected my problems as an adult with what happened to me as a child.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 1-26-89
BILL NO. SB 157

Mr. Chairman, Members of the Committee, I am Elizabeth Williams. I am 37 years old. I was sexually assaulted from the time I was 5 until I was 12. Intercourse was forced upon me beginning at the age of 9. An overwhelming fear of abandonment; a paralyzing fear of adult anger; and threats made by my abuser that he would kill a member of the family if I told, kept me silent about the abuse until I was 12 years old. At that time I told a friend of my abuser's actions. Upon disclosure, a family meeting was held at which my abuser was confronted with having sexually molested me. He denied having had any type of sexual contact with me. Many adult family members expressed shock and anger that I would fabricate such a story.

From that point on, I was labled a liar, and a trouble maker. I was forbidden to have contact with my abuser, his family, and all other extended family members. I was accused of having had sexual relationships with boys at school. I was forbidden to tell anyone about the abuse and all open reference to the abuse was terminated. My immediate family shunned me. I was treated with contempt and greeted by silence. All of this produced confusion, shame and guilt within me. Looking back now, as an adult, I realize I was faced with conflicts and contradictions that my child's mind could not begin to grasp.

I spent much of my youth trying to deal with the disruption I felt I had caused within my family and with the resulting isolation and condemnation. It is unthinkable that I could have brought civil suit against my abuser when I was between the ages of 18 and 21, for I firmly believed that I had wronged the family and especially my abuser. In my mind, I was to blame. I felt responsible for the incestuous acts themselves; I felt responsible for telling my "secret" to a friend, whil at the same time not telling someone sooner; and I felt an overwhelming burden of responsibility for the trouble I had caused my abuser and my family. Therefore, I wanted to place the entire matter behind me and get as much distance from it as possible. My overall reaction to memories of the incidents of sexual abuse and the events surrounding my disclosure was to forget them. By the time I was 17, I had no specific memories of the incidents and recollections of my childhood in general were vague. I left home at 18, married someone I had only known for 2 weeks, and began a family of my own.

Between the ages of 18 and 21, I was an unusually distressed young person who had very little comprehension of my problems. I had no idea that what I thought were not unusual mood problems, would later turn into severe depression and suicidal intentions. I had no way of knowing that later I would develop extreme marital problems in this marriage and in a subsequent marriage.

Between the ages of 18 and 21, I obtained prescription drugs to help deal with family distresses. I did not know that 10 years later I would be so dependent on drugs, that I could not make it through a day without them.

I had no idea that my frustrations and anxieties about parenting would lead me to follow the pattern of abuse that had been used on my. As a very young parent, I had no way of knowing that my emotional problems would become so bad that I would physically and emotionally abuse my own children.

Although I had experienced difficulties between the ages of 18 and 21, I had no idea that my emotional problems would later grow so severe that they would nearly destroy my life and the lives of my husband and children.

As an adult I have had extreme difficulty establishing and maintaining relationships of trust. I have had many sexual problems including promiscuity. I have suffered chronic insomnia caused by the same terrifying, repeated nightmare.

In my early 30's I began having even more terrifying nightmares; severe episodes of suicidal depression; and feelings of suffocation during marital relations. My marriage quickly deteriorated and in November of 1983 I sought counseling with Dr. Allison to confirm my decision to divorce my spouse, and by so doing, put an end to my problems. During our first session, much to my surprise, Dr. Allison suggested that my difficulties most likely stemmed from my incestuous childhood rather that from my marriage.

The most difficult thing for me to come to terms with in therapy, was that I was the victim and not the perpetrator of the sexually abusive relationship with my abuser. My resistance broke down somewhat in therapy, as I realized that my experiences were much the same as other adults who had been victimized as children. As my therapy progressed, I began to think more and more about responsibility.

I had spent thousands of dollars for counseling; I still had bills to pay; and I knew I needed more counseling, which would cost me more. I felt my abuser should at least be required to pay a portion of my counseling fees. I decided to file a civil suit against my offender. The District Court Judge stated in his decision, that my action was barred by the Statute of Limitations Law. I appealed to the Montana Supreme Court. That court agreed, but they recommended that the legislature change the Statute of Limitations Law to allow such actions.

I appeal to you at this time to pass the bill now before you and give adult survivors of sexual abuse in this state the opportunity to place responsibility for the acts committed against them as children squarely on the shoulders of their abusers. I appeal to you to allow these survivors the opportunity to force their offenders to help pay for their recovery, which costs thousands of dollars.

I am aware that passage of this bill will in no way effect my case against my abuser, for it is closed. My hope in testifying before you, is that other survivors will have the opportunity to sue their offenders. I urge you to pass Senate Bill 157. Thank You.

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 1-26-89
BILL NO. SB 157

TESTIMONY--SENATE BILL 157, SENATOR DENNIS NATHE, SPONSOR

Mr. Chairman, Members of the Committee:

My name is Fay Dozier of Reedpoint, Montana. You may recall that I previously testified on SB122. I am unable to give oral testimony on SB 157, but want my testimony on the record.

As I previously testified, I was sexually abused for 13 years. I had devastating emotional problems for many years after the abuse stopped. I sought help from various therapists for those problems from the time I was 18, but they always treated the symptoms, never the problem. I later came to call it "bandaid therapy". Throughout the years, I also suffered many physical problems, but the physicians could never find anything medically wrong with me.

In September of 1980, at the age of 30, I was suffering so greatly from severe depression, increased alcohol abuse, self-hatred and thoughts of suicide, that my husband had to force me to go back into therapy. I spent six months with an individual therapist. He seemed to give some credence to the possibility that the sexual abuse might have something to do with my problems. At the end of six months, he referred me to a therapist who conducted group therapy sessions for adult, female sexual abuse victims. By this time, I was 31 years old. I spent from March of 1981 to October of 1984 processing through my feelings of rage, pain, fear, guilt and self-hatred. During that time, I learned that my behavior and problems (both physical and emotional) were common characteristics of sexual abuse victims.

Not only was my recovery a long and painful process, but it was also a financial hardship to my family. The cost of the therapy from 1980 to 1984 was over $5,000. We are still paying off this debt. Throughout the years I would estimate it has cost me well over $30,000 to try to get help for the emotional, mental and physical pain caused by the sexual abuse.

If there had been a law such as this proposed one, I could have sought remedy through the courts to at least recover monetary damages for what was done to me. I couldn't stop him by filing criminal charges, but at least he might have been exposed and such an action might have been a deterrent so that he would not have continued molesting as he has done.

I strongly support Senate Bill 157. Thank you.

Fay Dozier

Fay Dozier

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 1-26-89
BILL NO. SB 157

SB 157 - Revised Civil Statute of Limitations for Child ~~Sexual~~ Abuse

My name is Susan Kraft Ball. I am 31 and a survivor of childhood sexual abuse. Although Montana has been my home for 10 years and I discovered my abuse less than 3 years ago, passage of this important legislation will not help me personally. Montana law would not apply to my case because my abuser lives in another state where the molestation also occurred. My motivation for this testimony is that I feel compelled to do whatever I can to help prevent even one child from having to experience the trauma and lifetime consequences of sexual abuse. I also want to help child victims and adult survivors to have access to the courts in order to have the opportunity to place the burden of responsibility for abuse and its resulting damage on the violators rather than on the innocent victims. I hope that my own history might give you some insight into the dynamics of sexual abuse and its consequences, and help you understand why the legislation before you needs to be passed.

My father was manic/depressive and from the time I was 8 or 9 until his suicide when I was 15, he was tortured by prolonged periods of suicidal depression and hospitalization, and brief manic episodes. My mother had to work full time and was preoccupied with my father's illness and suicide. I was the youngest of 3 sisters, and we all focused our lives on trying to help our parents. I did not understand what was happening to my father and family; I felt abandoned, confused, responsible, and desperately in need of love and attention. My abuser was a close family friend, lay minister, and lay counselor. My mother was dependent on him as a trusted advisor, confidant, and, after my father's death, lover. My sisters and I were also dependent on him as our primary source of nurturance - as a "surrogate" father.

I believe my molestation began when I was about 12, as this father figure very gradually introduced fondling and intercourse into our relationship. He told me not to tell because my mother and other people would not understand that he was just helping me discover my inner-self, my unique beauty, and my sexuality. He told me

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he "could be charged with statutory rape, go to jail, and lose everything he had, and I didn't want that to happen did I?". I felt more confused and guilty, and experienced a great deal of anxiety with each sexual encounter. I didn't know how to stop him without risking his rejection. I felt trapped by my family's emotional dependence on my abuser and feared further abandonment if I said anything or told anyone, so I remained silent. The abuse continued past my 18th birthday; even after I left home for college and work, the pattern of abuse and secrecy remained unbroken and would be repeated every time I returned home to visit. The longer it continued the more responsible I felt for meeting his needs, for the continuation of the abuse, and for maintaining the secrecy, and the guiltier I felt for not being able to stop it.

I now understand that I learned to cope with the repeated trauma through: 1) rationalization - "Since everybody trusts and loves him, this must be OK, and it must be good for me because he tells me it is..."; 2) minimization - "He isn't physically hurting me, therefore I can do this small thing for him, besides his needs are more important ..."; 3) splitting - I hid my inner turmoil by presenting a public image of what I thought people liked, I only acknowledged to myself and others the positive aspects of my relationship with my abuser, and I would disassociate from my emotions and even from my body during the actual abuse - like watching a scene from a movie; 4) denial - I denied my feelings - they were too confusing and painful, I denied that there was anything negative or unusual about my relationship with my abuser, and I denied to myself that the earlier abuse took place, and 5) escape - I escaped my feelings and thoughts by "spacing out" for hours on end in front of the television set.

I had memories and flashbacks of the fondling and intercourse I had experienced primarily during episodes of abuse and during intimate or sexual experiences in my

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adult years (I rarely dated during my teen years). I had never told anyone of my experiences nor did I comprehend that what I had experienced was molestation or incest (clinical definition) until after I was forced to disclose those experiences to my mother in the Spring of 1986 and to her counselor in June of that same year. My mother had found out while on a romantic vacation with my abuser the summer before, when he remarked on how fascinating it was that she made love just like her daughters. After several months of personal counseling, she confronted my sisters and I with this information and flew us home to discuss it as a family and with her counselor. During that family meeting I discovered that my sisters had also experienced similar long-term abuse and we recently confirmed that a female foster child had also been molested by this same person in our home. My mother's counselor convinced me that I had indeed been a victim of sexual abuse and suggested that I seek professional help when I got back to Montana to help deal with some of the inevitable consequences. Some of the consequences I have experienced include: susceptibility to repeated victimization, confusion about sex and intimacy, splitting and sexual dysfunction, depression and low self-esteem, and chronic headaches and nausea.

For several months after returning to Montana I tried unsuccessfully to block out the memories and feelings that came flooding back into my mind after so many years of suppression. I believe that had I not been forced to disclose, and had I not received counseling that helped me recognize the connection between my abuse and its repercussions in my own life, I probably would have maintained the secret for years until later life crises would have lead me to examine the causes. But it was like opening Pandora's Box - once the secret was out, the ugly and painful realities of my experiences and their consequences could no longer be pushed back into "safe" dark corners of my mind. I had to start dealing with them, and that has been an extremely costly, time consuming, disturbing, and painful process. I have been in

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individual, group, and marital counseling for 2 years. Sometimes I find myself wishing I had been paralyzed in an accident so that I would have some physical basis for my sexual dysfunction. Many times I have wished for my life to end so that I wouldn't have to feel or deal with it anymore, and so that my husband and our relationship would be free of its torturous impacts. It is an agonizing process to unlearn the lessons of the past and learn how to live as a functional, healthy person. I read everything I can on the subject, which, in addition to therapy, helps me understand that even though the influences of sexual abuse never go away there are ways of lessening its hold on my life.

I have recently made the very difficult decision to initiate a civil suit against my abuser in the State of Colorado. My abuser has not indicated any remorse or willingness to take responsibility for his acts of abuse, and has continued to place himself in a position of trust with other vulnerable children. I therefore felt it was necessary to go through the legal process to attempt to place legal, moral, and financial responsibility where it properly belongs, and to do what I can to make sure this chronic abuser doesn't hurt any more children. However, the lower court has ruled that the statute of limitations started running when I turned 18 regardless of the continuation of the abuse or the date of "discovery", similar to the present interpretation of Montana law. I am currently appealing that decision and hope that I will not be permanently barred from the justice system while my abuser escapes responsibility and potentially continues his abusive behavior unchecked.

Unfortunately, because of the dynamics of child sexual abuse, current Montana law effectively bars most victims due access to the courts and inadvertently protects child molesters. This legislature has the opportunity to make a positive difference in the lives of many innocent victims. You can help make Montana a better, safer place to live and grow-up. Please vote <u>for</u> this legislation. Thank you.

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EXHIBIT NO. 12
DATE 1-26-89
BILL NO. SB 157

SB 157 - Revised Civil Statute of Limitations for Child Sexual Abuse

My name is Patricia; I am a 28 year old incest survivor. I've already submitted testimony under this same alias for SB 122 (Revised Criminal Statute of Limitations for Child Sexual Abuse) which contains a more detail version of my childhood experiences.

I was sexually abused starting before I turned 3 to 17 years of age by 6 perpetrators who were mainly family members. My family was severely dysfunctional and alcohol abuse was prominent. Unspoken family rules such as don't trust, don't feel, and don't tell were ingrained and backed up with verbal abuse and physical violence by all family members. I felt trapped and isolated. I was on my own to deal with the sexual abuse and believed I had no other choice but to submit when cornered by an abuser. When I confided in 4 different adults about my abuse I only received negative feedback that reinforced my feelings of helplessness and responsibility. When I was 17 I began a long period of alcohol and drug abuse, and became sexually promiscuous because I felt helpless against any sexual advance. Shortly after I left home at 18, I married a man who continued to sexually abuse me, and we divorced three years later. I had relied on my family for reaffirmation and acceptance until quite recently. I feel this dependency on my family prevented me from discovering the connection between my behavior and the sexual abuses.

I sought counseling at the age of 25 because I had been physically abusing my current spouse and children. In an attempt to find out why and correct it before I lost my husband and children I entered counseling and eventually an incest survivors' group. I have been in counseling ever since and have gradually discovered the connection between the repercussions I have experienced and my abuse. I believe the following repercussions are the direct result of the

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combined abuses I experienced as a child: severe depressions, suicidal attempts, tendencies, and other self-destructive behaviors, alienation from peers, spouse, children, and society in general, anxiety, insomnia, inability to make decisions for myself, mistrust and fear of people, confusion, eating disorders, and a loss of personal identity. Even though they could also have been produced by the different forms of abuse individually, I feel the sexual abuse in particular intensified the repercussions dramatically. The repercussions I feel are due solely to the sexual abuses, and which especially affect my marriage are: sexual promiscuity, flashbacks to the abuses, nightmares of sexual abuse, confusion about sexuality, and shame of and disassociation from my body, and the irrational fear of being sexually abused by my husband.

I feel passage of SB 157 would provide me with an opportunity to pursue compensation for damages inflicted by those who abused me. I did not choose to be sexually abused and dealing with the damages has been, and will continue to be, a long, time consuming, and costly process. Medicaid has helped pay for my therapy and medical expenses so far, but I expect to be paying on the balance for many years. The repercussions resulting from sexual abuse are life long and also affect my spouse, children, and close friends. I have been receiving therapy since 1985 and I know that I will probably continue to need it off and on for the rest of my life. The opportunity to try to get compensation from my abusers would put responsibility where it belongs and would help relieve Medicaid and myself of its burden. I believe at least three of my abusers are still abusing children and one other is in prison due to molesting another child. Forcing them to take moral, legal, and financial responsibility would hopefully help deter them from abusing other children.

SENATE JUDICIARY
EXHIBIT NO. 13
DATE 1-26-89
BILL NO. SB 157

TESTIMONY IN FAVOR OF SENATE BILL # 157

Mr. Chairman and Members of the Committee:

My name is Kay . I'm 34 years old and I live in Missoula County. When my stepfather first sexually abused me at nine or ten years old, I was in bed. I pretended to be asleep because I was so horrified. The next day I acted like everything was OK because I really wanted it to be. After the second sexual abuse, my stepfather warned me not to tell my mother. He said telling her would only make it worse. Since my stepfather had in the past protected me from physical and emotional abuse by my mother, I felt not telling was the lesser of two evils. But the confusion of my former abuse protector turning into a sexual abuser made me feel abandoned.

Initially the sexual abuse involved manipulation (breasts, genitals, etc.), using sexual language like a lover would use, and making me manipulate him. This occurred in private. Some abuse, such as covert fondling, continued even with other family members present which was humiliating. There were no "safe" times when I didn't worry about being assaulted. The abuse continued for some time -- I'm not sure how long due to memory lapse. I felt awful; bad, ashamed, like somehow I deserved this abuse that I sensed was wrong.

My sister disclosed the abuse to our mother who then questioned my stepfather. He admitted it and said the abuse would stop but it continued on a lesser degree (brushing my breasts supposedly on accident, peeking through doors, and constant innuendos). I felt overwhelmed and insecure never knowing where or when I was safe. I avoided my stepfather whenever possible but never dreamed there could be any help, especially legally.

After that I was subjected to many abusive behaviors by my mother. She made as many, if not more, threats to guarantee secrecy and to protect my stepfather. The effects of her not protecting me and then blaming me for the sexual assaults caused even more emotional damage. I internalized the effects by daydreaming of

S. STATE JUDICIARY
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dying. I didn't know there were laws to protect children. I only knew that my protectors were my parents and in this case they were also the abusers.

Finally, after four or five years of this covert abuse, my sister and I were able to talk about it with each other since she was also a victim. We would stay awake at night, standing guard, to see if our stepfather was coming into the room so we could protect each other from him -- something no child should have to do. We became emotionally exhausted.

We were attending a church high school youth camp when my sister and I first told outsiders about the sexual abuse. We decided to run away because the youth directors assured us safety and protection. We stayed with church leaders a couple of days, then the police picked us up and took us to juvenile hall. That was horrifying for me. I was put in a cell, stripped and given jail clothes to wear. I was booked and fingerprinted -- treated like a criminal further reinforcing the guilt imposed by my mother. We told the authorities the reason we ran away was because of sexual abuse. They didn't say or do anything.

The next morning our stepfather and mother came to get us. I was terrified and felt my life was in jeopardy since the authorities, our last hope of protection, were willing to send us back to an abusive home. Our stepfather promised the probation officer he would get help for him and us, though we never received it. Not having stood up for myself before, I was petrified at the thought of going back home. Picture your most horrifying fears coming true and you'll sense the fear I felt that day.

The whole thing was smoothed over as if nothing had happened. In the name of secrecy, my other siblings were never permitted to know the reason why we ran away. My feelings were invalidated. The idea that sexual abuse was "no big deal" was enforced even further. There was no one to turn to for help.

Before the abuse happened, I wanted to go to college and be a teacher. After the abuse, all that mattered was being as safe as I could while I had to live there and to move out as early as possible -- which I did by marrying at 17. I just wanted to get all that behind me and make a new life for myself.

I wish it was possible to simply start new from today but the abuse still haunts me. I was totally unaware of the ongoing effects of sexual abuse. I haven't been able to have a successful relationship or even to ask for my needs to be met. I raged out of control the first year of my marriage, only to feel worse about myself. I lacked self-esteem. I suffered varying degrees of anorexia in my twenties. I worked to exhaustion trying to feel like I was worth something. I've done crazy things to get male approval. I've protected my children to the point of smothering them due to my fears of them being sexually abused too. I've been severely depressed and contemplated suicide on several occasions. I wanted to be loved so badly. I felt awful for so long but never knew why.

Years later, in my thirties, I was in a physically abusive relationship. I went to a therapist for help. That's when I started piecing the craziness of my life together and realized some of the effects the sexual abuse had.

I would avoid legal remedy if there were compensation or ways to deal with this on a level of honesty. Since there aren't, the laws need to support the victim as much as possible. To my knowledge, my stepfather has never received any help for his sickness and could therefore still be an abuser.

I wasn't aware of ongoing effects from the abuse within the statute of limitations. My testimony supports the proposed delayed discovery law -- it would be a great benefit to survivors under duress and the illusion that sexual abuse is "no big deal." The fact that cases will be brought into public court with more media exposure will show victims they can stand up against their abusers. The abusers will be sent the message that this dark secret has come to light and that retribution for their actions is likely.

Sexual abuse and its effects can cover a wide range. I think people saw abuse only as violent, gory sexual assault and that "fondling children [wasn't] that destructive." That may change and make the public more aware with the passage of this law. The proposed law gives victims the time they may need to recognize and admit to the devastation caused them by being sexually abused.

Thank you.

January 10, 1989

SB 157

SENATE JUDICIARY
EXHIBIT 14
DATE 1-26-89
BILL NO. SB 157

My name is Sandra Ward Gursky. I am forty five years old, and I am a SURVIVOR OF CHILDHOOD SEXUAL ABUSE.

I was six years old when it began. I was the "favorite" child in the family. He took me everywhere with him. He took me to his place of work, but only when no one was there. There he made me watch him urinate, and then he would make me touch his genitals. When my Mother was out in the evening, he would take me into their bedroom and take off my clothes from the waist down and make me sit on his bare body while he lay on the bed. I cannot say if there was intercourse. These two incidents happened over and over during a two year period. I remember them very clearly, but when I try to remember past a certain point, I cannot. Those two years contain many blank spots. I do remember being in fear constantly. He told me he would hurt me if I didn't do what he wanted. Since he beat my Mother and brother regularly, I was sure he would. He also told me he would kill me if I told anyone.

When I was not quite eight, it ended. My Mother, who had suspected, forced me to tell her. I was terrified, but he did nothing. Nothing that is, except watch me all the time. Until I was sixteen years old, I spent all my waking hours trying to blend into the walls, so that he, or no other man, for that matter, would notice me. I was withdrawn, extremely shy, felt I was not a good person, and was petrified of even the idea of sex. At sixteen, he approached me once more. I ran away from home and never went back. Fortunately, I had Grandparents who were willing to accept me into their home.

At thirty four, my second marriage was showing signs of failure. I had always felt that everything that went wrong in my life was my fault, so this must be too. Why should I have a good relationship, after all, I was a terrible person, with no worth. Why would anyone want to treat me well. I started drinking heavily to numb the pain of living. From there, I started to think about suicide as an escape from this destructive life. At thirty six, feeling that my whole life was a failure, and after a particularly close call with the drinking and the suicide thoughts, I went into therapy. I thought I needed help because I was a failure at living and I had

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to fix me. But, during the two year period of my therapy, I discovered that I had been emotionally crippled by the Childhood Sexual Abuse. It had affected my whole life. I was a victim as a child, and as an adult, I remained a victim. I knew no other way to live. I was unable to choose a healthy life style. My relationships had all been destructive and abusive. I was disfunctional in every aspect of my life. I overprotected my child and other children. I was suspicious of every man. I was also sexually disfunctional. The deep, dark secret of my past always made me feel like I was a freak, and unworthy of any kind of "good life". I had struggled all my life, all because an adult male had used me--a little child--as a sex toy. And, I was not the only one he had abused. Two of his brothers' daughters were his victims also. There may have been others, but we never knew of them.

At the age of thirty eight, after two years of therapy, I discovered the connection between the abuse I had suffered and my disfunctional life. By then, my abuser had killed himself and my Mother. It was too late to do anything about my abusers actions.

As a victim, I had spent a major portion of my life trying to deal with the crippling emotional impact of this abuse. I was struggling with long before I knew that it was the problem. The therapy that was necessary to help me put my life together, was very expensive, emotional and time consuming.

I think that both the bills put forth during this legislative session could be a deterent to this abuse. If the abuser knew that he/she could be called to account for his/her actions against a child, even years after the event, perhaps more of them would get help and/or think before acting on their sick impulses. We must all be held accountable for our actions. The statute of limitations, set as they are, prevent many victims of this abuse from ever taking any action towards their abuser. While they are children, they have no power to do so, and once they have reached adulthood or discovery, the statutes have expired. The secret is kept, and the abusers continue to abuse our children.

SENATE JUDICIARY
EXHIBIT NO. 15
DATE 1-26-89
BILL NO. SB 157

My name is Rosanne E. Davis. I am 36 years old and a resident of Missoula, Montana for the past five and a half years.

After years of maintaining the conspiracy of silence in my family, I am giving my testimony in support of the proposed change in the current statute of limitations in regard to child sexual abuse cases.

I am doing so because I am a survivor of child sexual abuse who has had no remedy, and therefore, no rights. Even if the proposed change is passed, it will not benefit me directly but my testimony is important in enabling other survivors, both men and women, to pursue redress.

Shortly after moving to Missoula in 1983 I began experiencing night terrors. I felt that someone or something was creeping around my bedroom and I was too paralyzed with fear to get up. I laid awake all night and slept when I could during the day. I entered counseling after several weeks of this.

During the initial interview, much to my surprise, my therapist asked if I had been sexually abused as a child. Until that point in time I believed that I had never told anyone what had happened to me. Thus my odyssey began. I found myself as a thirty year old woman sleeping with the lights on at night because I was afraid of the dark. The majority of the following testimony is derived from memories gathered within the past five years.

I am the oldest of six children. I have two sisters, both of whom were also sexually abused, and three brothers, one of whom I suspect was abused sexually. From the outside, I imagine that we looked like the all-American family. My mother was a homemaker until my parent's separation and subsequent divorce. My father, and abuser, worked as an electronics engineer and was President of the Jaycees. We were practicing Episcopalians.

The earliest memory that I had of being sexually abused occured when I was five or six years old. This involved sexual intercourse by my abuser. Incidents of sexual abuse repeatedly occured until I was twelve years old ranging from sexual fondling to intercourse. I was requested to manually stimulate my abuser on several occasions.

I did not know until 1984, at the age of 32, that the sexual abuse began before I was three years old. This knowledge had a profound affect on me. As a child I reasoned that the abuses I had experienced occured because I was a bad child who deserved to be punished. As a teenager, I had been led to believe that I had seduced my father, as a five year old. I owned the responsibility for what had happened to me; I thought it was my fault. Not only did I carry that shame and guilt for over twenty years, I actively hid in fear that someone would find out what a truly evil person I was.

Not only was I sexually abused, I was also verbally, physically and psychologically abused. I was told before the age of ten that I was a "slut". I was told that I was nothing; that my abuser had created me and that I was a "slave". I suffered severe beatings with belts, sticks, ping pong paddles; and was thrown, shoved, slapped, kicked and hit with a fist.

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As a child, I believed that other families were like ours. Not until I was approximately nine years old did I suspect that something was wrong when my abuser had begun threatening me with death should I ever tell anyone what he was doing.

I had no reason to doubt the sincerity of my abuser's threats. I believed that he could, at any moment, choose to kill me. He forced my sisters and I to witness the death of our kittens by stoning them. He strangled the neighbor's cat. He beat our dog to death. I refused pets fearing that my abuser would kill them as well. I was pulled into deep water at a lake and while my abuser sexually assaulted me, he held me at chin level in the water and told me that if I made a sound, he would drown me. He kept a gun in the house that had a silencer which he would screw on and sitting by the open back door, shot anything that trespassed our property.

Within an eleven year period, our family moved a minimum of six times. We had telephones in our home until my abuser ripped the last one from the wall when my mother attempted to call for help. He broker her wrist. My mother did not own a driver's license or know how to drive a car until she was almost forty years old. I am convinced that my abuser purposefully chose to isolate the family.

He decided with whom I could be friends and at a moments notice would tell me that I couldn't play or talk to someone ever again. And I did not. In fact, I stopped making friends with other children because I could not stand the pain of losing them. I could not count on anything; love became equated with violence. I spent most of my childhood alone, hoping that someone would see what was happening and rescue me. No one ever did, although I learned later that people suspected the violence in our household.

My abuser was omnipotent. I lived in constant fear, trying to anticipate his moods in order to avoid another abusive event. Prior to my twelth birthday I had decided that when the next episode of abuse happened I was going to shoot my abuser with his own gun. I couldn't see any other way to make it stop.

My abuser was removed from our household in 1964 after he sexually molested an eleven year old friend of my sister's. He was sent to prison and my family moved out of state. My mother was thirty-two years old and had six children ranging in age from twelve to two.

As a teenager I lived in extreme poverty and was working when I was thirteen. I spent most of my time on the streets, started drinking at fifteen, attempted suicide at sixteen and was pregnant by seventeen. I married. Two children and five years later I was divorced. I raised my children alone for fourteen years and remain single.

The only discussion, (prior to therapy) concerning the sexual abuses I experienced as a child, was with my mother when I was approximately fourteen. I simply told her that it had happened and did not go into any detail; I wanted to protect her. At that time my mother denied knowledge of the sexual abuse. I was told that good people "forgive and forget". I spent the rest of my life forgetting which I was able to do until the night

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terrors began.

I have sinced learned that my mother did know about the sexual abuse because I told her when I was three years old. She has stated that I sought protection from her again when I was nine and then at eleven. I have no memory of these events and can assume, at this point, that I had simply resigned myself to an environment that I had no control over.

Given the fact that child protective services did not exist, a welfare program did not exist and battered women went unnoticed, my mother did not possess any alternatives to protect either herself or her children. My abuser/father was both verbally and physically abusive to my mother. She attempted to have my abuser commited at one point, only to be told that he would be given thirty days written notice. We would certainly have been dead by that time. She went to our minister for help who told her that she should try harder to make the marriage work. She managed to get my abuser to leave the family several times before I was eight years old, only to have him return with promises that it would never happen again. My mother could not tell her family. Both she and my abuser had been abused as children. In the finish, she resigned herself to the circumstances in her life just as I did later.

I did not bring suit within the current statute of limitations because I was incapable of doing so. The experiences of my childhood were recalled through the therapeutic process. I continue to remember secrets long hidden. I was unable to place responsibility on my abuser, rather than on myself, until I was in my early thirties.

I firmly believe that this proposed legislation would act as a deterent in sexual crimes against children because it would provide recourse where none exists. The fact remains that my abuser has been able to avoid responsibility for his crimes because I would have had to pursue remedy no later than the age of sixteen. It is unrealistic to assume that I had the ability to do so when I was entrenched in repressing any memory of what happened to me and the fact that I was well on the road of self-abuse.

The effects of enduring at least nine years of child abuse left me without a sense of whom I am other than as a victim because I was socialized to be one. My self-respect was non-existent. I did not and still do not feel that I have the right to ask for anything or to say "no". I would not let anyone know that I was in need because to do so would have made me vulnerable to abuse. The need to have control over every aspect of my live in order to feel safe has at times been overwhelming. My trust in other human beings has just begun to grow. I thought that I was never really the person that people knew me to be; I was lying and hiding in fear that if anyone knew, they would reject me. I developed my first real friendship in 1983 at the age of thirty-one. Suicidal ideation and depression were ever-present aspects of my life until 1985. I have a sporadic history of abusing drugs and alcohol to numb the pain just enough to get through another day. I am still deathly afraid of anyone's anger. I find myself hyper-sensitive and intimidated by male authority

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figures. I have effectively managed to sabotage most successes because they are incompatible with my self-concept as a loser. I was unble to allow my children to love me and for me to love them.

I have pursued therapy when I could financially afford to. I have come to understand that the trauma of my childhood is not something that I can rid my soul of, although I have tried. I am learning to live with the pain of what happened to me without shame or guilt. And I will struggle with this for the rest of my life.

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EXHIBIT NO. 16, p.1
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BILL NO. SB 157

1/17/89

To Whom it May Concern,

I was molested as a child. In 1965 at the age of four I did not have the power to tell of my abuse. I blocked it from my memory.
Seven years later when I remembered, it was too late for me to take legal action. There was no intervention or advocacy for me and I suffered in silence for many years.
To this day I am without legal means or rights to sue my assailant. My rights were gone before I was even aware of them. I have spent thousands of dollars in my recovery. As a medicaid patient the taxpayers have spent for my recovery.
If the Statute of Limitations had been extended before my twenty third birthday, I would have been able to seek restitution.

EXHIBIT NO. 16, P.2
DATE 1-26-89
BILL NO. SB 157

It is absolutely imperative for the millions of sexually abused children to have a voice.

Our Society is morally obligated to listen to their voices and we are morally obligated to take action against abuse. We must allow our children to have the power to say no.

As the parent of a sexually abused child and as a survivor of sexual abuse, I'm telling you it is hellish torture and I strongly urge you to extend the Statute of limitations.

Thank you,

Mary Hoff

17

DATE 1-26-89

BILL NO. SB 157

1/17/89

To Whom it may Concern,

" I think we should change the law because if people get molested and don't tell within seven years then they don't get to get it off their chest and tell by suing the person who molested them. "

" If I myself didn't report it in seven years I would feel really bad cause I hadn't gotten it off my chest.

If I didn't told, that person would still be molesting children and I feel very strongly about children's rights. I think the law will encourage children to tell their problems. That's why I think we should change this law.

Thank You.

Age 9

SENATE JUDICIARY
EXHIBIT NO 18, p.1
DATE 1-26-89
BILL NO SB 157

Legeslative testimony for Senate Bill 157

I was sexually abused from the time I was five years old, and possibly younger, until I was twelve. The sexual, emotional, and other physical harrassment and abusive treatment was continuous. Ingrained into my psyche during these years was fear, anger, helplessness, hopelessness, the feeling that I was somehow bad, shamefull, and "dirty", worthlessness, the inability to trust,and a great sadness. I thought the abuse would last as long as I would. In fact that childhood feeling of hopelessness was in a sense very true. It has lasted my lifetime --- never leaving for a moment, and only until recently not caused an inner uprising of intense fear and anger.

When the abuse finnaly ended, the psychological traumas had begun their devestating effects. Unable to cope with the reality of my feelings about what had happened, I blocked it from my memory at about age thirteen. Throughout my teen years acceptance within my family and with my peers was made very difficult by my behavior as a confused child turning to inappropiate means of behavior in order to be noticed, heard, accepted. I was raped at age twelve. I ran away from home at age twelve. I became such a "problem child" that I was placed in a mental hospital for a time. Eventually, I withdrew, and upon reaching adulthood I found myself in control only through rigidity of standards and opinions that I'd set for myself. My family still considered me a bit confused, but I was seemingly "straightening out". In reality I'd developed a strong front to use for the world to see, because I was unable to look at the real me or to have anyone else see too deeply. By the time I reached adulthood I had thought of everything from suicide to drugs to prostitution, but fortunately never acted on any of them. Never once did it occur to me what the source of my inner agony was. I did not even remember that the sexual abuse had occured until I was 27 years old--- long after reaching majority. Even then I was unable to come to grips with the reality of it for another three years. By that time my marriage was having problems, a small business I'd begun was barely kept going, and I was an emotional wreck. In short, the controlled facade that I'd so carefully built was crumbling in the light of remembered horrors, and I was crumbling with it.

Never once during these three years that I'd remembered the abuse, did I ever consider legal action. I hated my abuser, and yet loved him too. It is a very odd thing to love someone who has been so undeniably cruel, and yet I cannot ignore that feeling. I blamed myself for what had happened, although in truth it was in no way my responsibility. It took me three years of constant therapy to even be able to write my abuser a letter stating the facts and that I was aware of them. Even after that three years, I was terrified of his and my family's reaction. He has denied it entirely, but unlike most women the majority of my family believes me. Taking this action was one of the most difficult things I've ever done. The fear that was ingrained in me as a young child should I ever dare to tell the secret certainly did not diminish in my adulthood. There is <u>no way</u> I would have had the emotional wherewithall to bring legal action against this person until only two years ago --- 14 years after I reached majority. I now have the emotional strength and the understanding of the complexity of the psycological devestation that sexual abuse causes to take action if I choose to --- but the statute of limitations is past. And so a person who has done a cruel and permanent injustice to another person will remain unscathed by his actions except within the closed doors of his family.

We must be able to trust our protection under the law. The abusive person must know there is rightful recourse for the pain and suffering he is inflicting. I believe that ability to take recourse should begin upon the victim's full understanding of the damage inflicted. The psycological effects of sexual abuse are deep and lasting. But as a child living with this and growing to adulthood I had no understanding whatsoever that my problems were due to sexual abuse. Upon even

SENATE JUDICIARY
EXHIBIT NO. 18.0.2
DATE 1-26-89
BILL NO. SB 157

remembering it I was too traumatized to do anything about it. It has taken years and years to learn to live with myself and the facts. Life is complex --- people are complex. The revision of the law proposed in the bills before you would recognize that complexity and preserve the rights and due process that is due each individual.

Does my abuser continue to abuse children? I do not know. But I do hope that if he has, that child will survive to adulthood and be able to reach an understanding of herself and the ramifications of his unjust behavior, and still be able to take action at whatever level she so chooses and finds not one door closed to her plea.

I urge you to listen, to understand, and to pass Senate Bills 122 and 157.

Signed,

KGF

Box 163
Florence, Mt. 59833

1/19/89

SENATE JUDICIARY
EXHIBIT NO. 19
DATE 1-26-89
BILL NO. SB 157

SB 157
SB 122

Ladies and Gentlemen;

My name is Nocona. For legal purposes I chose not to use my legal name.

When I left my hometown in 1980, on my way to Montana, I was 21 years old. At the time I left I did not realize my ststute of limitations was running out. I did not know I had a statute. I thought if I left and changed my name my life would be different, I would be different. I believed I could handle my past and emotions without counseling. I did not think there was anything wrong with me. I look back now and realize I had no responsibility, trust, self-esteem, honesty, family, childhood or God.

I was kept from my family for approximately six years. The excuses - endless. Only through counseling did I relate the damages of my past and present to the abuse. My anger is most dangerous to myself. I don't know how to be angry. I wasn't allowed to show anger. I used drugs and food as a way to cope with everyday life. I now have a child and I am very conscience of changing his diaper and teaching him his body parts. I can't say the word "no" to my husband when I am in an intimate situation. I am in approximately four hours weekly of intensive counseling.

I went public with my abuse shortly after the birth of my child and had told nobody before. My husband of four years had no idea. I did not have the trust in anybody to tell.

SENATE JUDICIARY
EXHIBIT NO. 19 p 2
DATE 1-26-89
BILL NO. SB 157

I could not go to the police for my offender was a police officer. I could not go to the church for my offender was my Sunday school teacher. People have asked me," why did it take so long to come forward ?" My offender had threatened my life saying," if you tell anyone I will kill you." I was also told," how easy it would be to break your neck." I believed this. I still do.

I have carried my abuse with me since I was six years old. It stopped for awhile until I was 10 years old, then continuously to the age of 16 years old. I am the oldest of five children, three girls and two boys. There was not anyone to turn to.

After I told my husband of my years of abuse, he confronted my offender with his knowledge and asked for help paying for the counseling I was to face. My offender refused to pay what my insurance would not cover and began denial. We were told we would have to take legal measures in order for my abuser to take responsibility for the damages caused.

On my second visit to my therapist I asked her if," I was the way I am because of the sexual abuse ?". I didn't know the answer to my question. That was my point of discovery.

When my emotions come into my life, be it anger, distrust, helplessness and depression, they are not that of an adult. They are that of a 10 year old. This is where I quit growing emotionally. 10 year olds can not protect themselves even in the body of an adult. 10 year olds can not protect

SENATE JUDICIARY
EXHIBIT NO. 19, p. 3
DATE 1-26-89
BILL NO. SB 157

themselves while doing sexual acts of adults. An adult can protect a child of 10 years old. There are three years of my life I can't remember, 13, 14, and 15. I think that my mind is wonderful in the way it protects me and I think that when I am streng enough to remember, I'll remember.

The natur of my abuse was; me touching my offenders private parts at the age of six years old. At 10 years old my offender would intrude the bathroom while I was urinating. At 11 years old there were pornographic movies for stimulation and learning techniques, oral sex, use of an instrument, voyerism (having me watch my offender with another victim and non-victim) and sexual intercourse.

I did these things to save my life. I would survive by pretending I was not there or by focusing on an object so I would not feel. I did feel disbelief. I did feel betrayed then and now. The betrayal of someone I trusted was beyond my comprehension as a child. I felt it was my fault, that I had done something wrong, but I couldn't figure out what it was. I did feel it was the only way this person loved me. I felt sorry for my offender. As a child there was no logic. As an adult there is no logic. I was my offenders property to do with as wanted.

With the denial, this abuser has not accepted the responsibility of these actions and does not acknowledge any wrong

SENATE JUDICIARY
EXHIBIT NO. 19, p. 4
DATE 1-26-89
BILL NO. SB 157

doing. Three young children were being abused at the same time my abuser was allowed to work with children in the community based on trust. Present laws with their short ststute of limitations are obviously ineffective in preventing sexual abuse. The abuser avoids discovery and prosecution by simply threatening a terrified child with physical harm. Their abusers need to be made responsibile to their victims through more encompassing legislation. Then and now it is accepted by society as a problem, the victims problem. With the statistics as they are known, it is an epidemic that needs to be controlled. It needs to protect children who are so helpless and defenseless against abusers with power and strength. We need to stop this vicious cycle of abuse. Children need to be heard and protected. They need to be given a chance in life to live it to the fullest and to become responsibile adults.

I did not realize until recently how my life was affected by my abuse. The simplest things in life are so difficult to perform, ordering out of a restaurant menu to being overwhelmed by ordinary everyday household chores or looking at my husband and child after I have verbally channeled my unwanted anger at them. Thinking in a matter of five minutes, four different ways to commit suicide. I isolate myself from people who love and care for me and try to get close to me. I push them away for fear of being rejected.

SENATE JUDICIARY
EXHIBIT NO. 19
DATE 1-26-89
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I am reprogramming 24 years of habits, addictions and survival techniques that are of no use to me as an adult. When my husband married me he had no idea of my past and now he feels the rape, abuse and anger that I do, beoause he loves me. I see the pain in his eyes, for me. I see his helplessness. How do I teach my child the important morals in life; trust, self-esteem, honesty, responsibilty, family and God if I don't know how myself? I am learning at 30 years old, ever since the silence was broken.

SENATE JUDICIARY
EXHIBIT NO. 20
DATE 1-26-89
BILL NO. SB 157

Kim Darling
626 N. Caravan
Missoula, MT 59802
January 18, 1989

TESTIMONY FOR THE LEGISLATIVE RECORD RELATIVE TO SENATE BILL 122

I am an incest survivor. I discovered this when I was twenty-nine years old. Prior to this discovery, I suffered suicidal depression for ten years. I was disabled by an eating disorder and drug addictions. I began seeing therapists when I was twenty-eight because of difficulties in my marriage. Although the therapy was helpful, I had a sense that I had still not gotten to the source of my difficulties. Then, while participating in a workshop on incest as part of training to work in a crisis intervention network, I encountered a list of characteristics of incest survivors. Every item on the list applied to me. The next day, during the course of personal sharing in the workshop, I began to remember specific incidents of sexual abuse in my childhood. The process of remembering continues for me even now.

Since the time of the initial discovery, I have completed a BA in Social Work and am working in the recovery process with other survivors. This recovery process requires letting go of feelings of responsibility for what happened to us as children. It requires moving through intense feelings of anger, fear, grief and shame. This recovery process begins after we break through the very thing that helped us to survive, that is, denial. Again and again I have seen women accomplish this in their late twenties and early thirties. It is unrealistic to expect survivors to be willing or able to confront their abusers while they are still dependent, physically, emotionally, and economically on the familial system in which the abuse occured. In young adulthood, the denial that allows for survival is still functional.

I confronted the man who abused me about that abuse three years after I began to remember it. He laughed at me. He denies still, as he did then, that what he did to me was injurious. He is supported in his denial by a cultural denial of the existence and extent of injury done by the sexual abuse of children.

I urge you to pass this bill before you. It is a signifigant step in breaking through cultural denial of the effects of childhood sexual abuse.

SB 157

NAME: [illegible] DATE: 1/26/93

ADDRESS: 128 S. 6th W. - Missoula 59801

PHONE: 543-8415

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: See exhibits

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Regan Hill DATE: 1/26/85

ADDRESS: Box 1708 - Helena - 59602

PHONE: 442-5761

REPRESENTING WHOM? MT. CATHOLIC CONF

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: WRITTEN TESTIMONY

See exhibit 7

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 157

NAME: Leslie Burgess DATE: 1/26/89

ADDRESS: 1802 Trail St., Missoula MT 59801

PHONE: 728 3577

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: see exhibit 8

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

S..N T.. JUDICIARY
EXHIBIT SB157
DATE
BILL NO.

NAME: Elizabeth Williams DATE: 1-26-89

ADDRESS: 657 Michigan Ave. Missoula

PHONE: 549-6335

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: See exhibit 9

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY

EXHIBIT NO. _____

DATE 1-26-89

BILL NO. SB 157

NAME: Susan Kraft Ball DATE: 26 Jan 1989

ADDRESS: 1104 Toole Ave, Missoula, MT 59802

PHONE: (406) 728-7591

REPRESENTING WHOM? Myself and my family

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: The legislation provides victims of child sexual abuse access to the justice system and should help deter child molestation. As a survivor of sexual abuse I strongly support this bill.

see exhibit 11

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB157

NAME: Quinton Pond DATE: 1/26/89

ADDRESS: P.O. Box 3805

PHONE: 728-5437

REPRESENTING WHOM? Montana Committee for Prevention of Child Abuse
Child & Family Resource Council

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB157

NAME: Leo Gallagher DATE: 1/26/04

ADDRESS: 1203 Hauser, Helena, MT

PHONE: (406) 443-1241

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I support the ~~enactment~~ extension of the statute of limitations in civil actions as perhaps the most effective way to seek redress ~~from~~ for the victims of crime.

SB 157

NAME: Holly Franz DATE: 1/26/89

ADDRESS: 653 N Warren Helena, MT

PHONE: 443-2001 442-6560

REPRESENTING WHOM? Womens Section of the State Bar

APPEARING ON WHICH PROPOSAL: SB 157

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: The concept of fairness which supports the discovery doctrine supports extension of the doctrine to survivors of sexual abuse. The discovery doctrine will allow claimants to bring a civil action after discovery of the injury and the cause of the injury.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 1-26-89

COMMITTEE ON Judiciary

1 of 4

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Ray Peddick	Self	SB157	X	
Judith Ellison, PhD	"	SB157	X	
Elizabeth Williams	Self	SB157	X	
Katherine Peddicord	self	SB157	X	
Leslie Burgess	Self	SB157	X	
Leo Gallagher	Self	SB157	X	
Robert Dozier	Self	SB157	X	
Mary Wald	AFS	SB24	X	
Gayden C. Lange	self	SB157	X	
Martin Adrian	Self, William Kaggs	SB157		
Hugh M. Black PhD	Mont Psychological Asso	SB157	X	
Jeni Nikles	Montana Ed. Assn	SB157	X	
Megan Hill	MT. Catholic Conf.	SB157	X	
Jesse Sondhaved	St Peters Hospital	SB157	X	
JUDITH CARLSON	NASW	SB157	X	
Susan Kraft Ball	Self	SB157	X	
Gayden Nordlund	MT Women's Lobby	SB157	X	
Joel T. Jarvis	Attorney - Children Network	SB157	X	
Steve Walton	Mental Health Centers	SB157	X	
John Madsen	Family Services	SB157	X	
Kevin Nathy	Cattlemen Assn.	SB157	X	
Jerri Lamson	Vol. of America	SB157	X	
Jo Acton	Youth Services Center	SB157	X	
Noreen Corne	Gallatin Park Co Youth Guid	SB157 and	X	
Jon Shaw	Helena Youth Resources	SB157	X	
Gwyn Gripe Park	Child & Family Resource Council	SB157	X	

(Please leave prepared statement with Secretary)

DATE 1-26-89

COMMITTEE ON Judiciary 2064

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Alexis A Simmons	Parents Anonymous	157	✓	
Chuck Coyer	self	157	X	
Jeanne Sponsellee	Child & Family Resource Co.	157	X	
Debby Huigens	MASW	157	✓	
DAVE EVENSON	MT Unity System	H3-38	✓	
Jeanne Kemmis	Parents Anonymous of MT	157	✓	
Bob Kelly	OPI	157	✓	
Mary Westwood	self ~~attorney~~	157	✓	
Polly Frame	Womens Section of State Bar	157	✓	
Nancy Harrison	Mont Y Today	157	✓	
FRANK L. OROZCO	MONTANA COURT REPORTERS ASSOC.	SB 209	✓	
Jerry Kilby	MONTANA Court Reporters ASSOC.	SB 209	✓	
Becky Orozco	MONTANA Court Reporters ASSOC.	SB 209	✓	
Candi Nordhagen	Montana Court Reporters Assoc.	SB 209 157	✓	
Jeanne Anderson	Mont Court Rep Ass	SB 209	✓	
Zander Blewett	Self	SB 208	✓	
Robert NIEBOER	Mont Reporter ASSN	SB 209	✓	
Sharon L. GAUGHAN	MONT REPORTER ASSN	SB 209	✓	
Sam T. Mazzulla	Mont Reporter Assn	SB 209	✓	
H. Buck Boles	Mont Chamber of Commerce	SB 208		✓
J. whitehead	Liability Co.	SB 208		✓
John Mudis	N/A - Par Poor	208		✓
Les Berry	BSF	208		✓
Tim Robison	Mont Liability Coalition	208		X
Mike Sherwood	MTLA	208	✓	
[illegible]	Court Reporters	209	✓	

(Please leave prepared statement with Secretary)

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on January 31, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: Senator Jenkins

Members Absent: None

Staff Present: Valencia Lane, Legislative Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion: There was none.

HEARING ON HOUSE BILL 59

Presentation and Opening Statement by Sponsor:
Representative Spaeth of Joliet, District 54, opened the hearing. HB 59 would allow the State Bar to have access to a individual's criminal history record if applying for the Bar. One responsibility by the Supreme Court is to complete a fitness check, particularly relating to criminal history, on people who apply to take the bar in the State of Montana, he said. At the present time, the bar can only receive information from the State of Montana, but also would like to have access to information from the federal government. The FBI indicated that unless the state changed its law, there would be no access to that information. Persons having criminal backgrounds may not become lawyers; thus the reason for proposing the legislation. He urged support of the bill.

which cut back benefits and the limitations, except for the judges system and that is what this bill would do.

George Bousliman, representing the State Bar of Montana, stated this bill would encourage young judges to stay on the bench. He supported SB 241.

Jean Turnage, Chief Justice of the Montana Supreme Court, encouraged the committee to consider SB 241. He pointed out that, at this time, the District and Supreme Court judges have to reach the age of 65 before they are eligible for retirement, as well as having the cut back benefits.

Opponents:

None

Questions From Committee Members: Senator Halligan thought the use of Dissolution of Marriage fees could cause problems. Senator Mazurek stated, this year the budget subcommittee had "freed up" $40 of the $100 fee, taking only $35 which, is freeing up an additional $5 for the programs. He said that $23,000 of it would come from the substitution of judges. Jim Oppendahl stated the funding of the judicial system had used as the District Court fee, instead of taking a certain percentage of all fees. This bill would attempt to make up the salaries shortfall in the judges retirement system.

Closing by Sponsor: Senator Mazurek closed by stating that judges need credit for what they pay in. He urged the committee to support SB 241.

DISPOSITION OF SENATE BILL 157

Discussion: There was none.

Amendments and Votes: Senator Halligan moved to amend SB 157. (See Exhibit 5.) The motion CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan moved that SB 157 DO PASS AS AMENDED. The motion CARRIED unanimously.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date Jan. 31, 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS			
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 31, 1989

MR. PRESIDENT:
We, your committee on Judiciary, having had under consideration SB 157 (first reading copy -- white), respectfully report that SB 157 be amended and as so amended do pass:

1. Page 2, line 4.
Following: "injury"
Strike: "or condition"

2. Page 2, lines 6 and 7.
Following: "injury" on line 6
Strike: the remainder of line 6 through "condition" on line 7

3. Page 2, line 10.
Following: "injury"
Strike: "or condition"

AND AS AMENDED DO PASS

Signed: _____
Bruce D. Crippen, Chairman

H.C. '89
2/1
9:24 am

scrpb157.1:1

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on March 6, 1989, at 9:05 a.m.

ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE BILL 122

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, stated this bill amends the criminal statute concerning sexual abuse of children. Under current law the statute of limitations starts running five years after the last offense. This causes a problem for anyone, especially a child who is in a family situation where the last offense occurs while still a minor and are still financially and physically dependent on that family unit. This bill would change the statute of limitation to start at the age of eighteen and run until the age of twenty-three give those children a chance to leave that family unit and become emotionally, financially and physically independent and more time to mature to understand what has happened to them. There is one amendment requested to the bill which will be explained by Jean Kemmis (EXHIBIT 1).

Testifying Proponents and Who They Represent:

Jean Kemmis, Attorney, Director of Parents Anonymous
John Connor, County Prosecutors Services Bureau and the Attorney General, Marc Racicot
Lewis Pepples, self
Janet Allison, Montana Psychology Association, self
John Madsen, Department of Family Services
Christie Marron, Montana Council Mental Health Centers
Janet Benson, Montana Association of Social Workers
Carol McKerrow, Montana Commission for the Prevention of Child Abuse

Recommendation and Vote: Rep. Darko moved SB 122 BE CONCURRED IN AS AMENDED. Rep. Brooke seconded. The motion CARRIED unanimously.

HEARING ON SENATE BILL 157

Presentation and Opening Statement by Sponsor:

Sen. Dennis Nathe, District 10, stated that this is the civil side of sexual abuse and applies the discovery exception to sexual abuse cases. This would be their redress for a wrong committed against them.

Testifying Proponents and Who They Represent:

Rep. Dave Brown
Rep. Bill Strizich
Jeanne Kemmis, Attorney, Direct of Parents Anonymous
Holly Franz, Attorney
Leo Gallagher, Lewis & Clark County Attorney's Office
Noel Larrivee, attorney
Brenda Nordland, Attorney, Women's Lobbyist Fund
Dr. Janet Allison, Clinical Psychologist
John Madsen, Department of Family Services
Steve Waldrom, Director of Montana Council of Mental Health Centers
Carol McKerrow, Montana Committee for Prevention of Child Abuse
Susan Swineheart/Janet Benson, Montana Association of Social Workers
Brenda Nordlund, Montana Women's Lobby
Noel Larrivee, Montana Advocacy Project
Megan Hill, Montana Catholic Conference
Tony Nikolas, Montana Education Association
Holly Kaleczyc, OPI
Leslie Burgess, self
Elizabeth Williams, self
Susan Kraft Ball, self

Proponent Testimony:

Jean Kemmis stated that the purpose of SB 157 is to allow application of the discovery rule to civil cases involving childhood sexual abuse. The discovery rule already exists in law and is an exception to the statute of limitations in civil cases. The discovery rule applies where the special circumstances of the case involves inherent delay which is beyond the control of the individual who is to bring suit. SB 157 should be passed in order to include the cases of childhood sexual abuse within the coverage of the discovery rule because childhood sexual abuse involves circumstances of delay in bringing suit which are beyond the control of the person who is injured. The Montana Supreme Court was asked to apply through judicial interpretation the discovery rule to these cases although courts in Wisconsin and Massachusetts, but our court declined saying the Legislature

holds the prerogative to make that determination. In 1986 the Washington Supreme Court was asked to apply the discovery rule to these cases and declined, with the concurring opinion that said that this is the exclusive providence of the legislature and the judiciary must not invade it. In March, 1988 the Washington legislature approved the bill that is the model for this bill. It passed in Washington unanimously save for three abstentions. California also has a similar bill that provides that courts are not precluded from applying the discovery rule. Under current law in Montana the statute of limitations that applies in these cases is the usual, general statute of limitations of three years for torts. This means that under current law the statute starts to run at age 18, runs for three years, expires at 21 and the victim is forever barred from recovering money damages for the counseling to overcome the trauma of childhood. As with the criminal statute, the civil is workable in circumstances where the victim is a stranger to the abuser but the same problem occurs where the victim is a member of the abuser's family or otherwise under the abuser's control. There are human limits to a victim's ability to bring suit before age twenty-one and the real fall-out may not come until the person is thirty or more and the statute of limitations has expired. Age is a barrier and the discovery rule applied here will allow victims the opportunity to present in court the testimony showing that the delay was caused by circumstances beyond their control.

Holly Franz stated that the statute of limitations basically addresses how long the courthouse door stays open for injured parties and generally starts to run the minute that injury occurs because the person is aware of the injury and can use the full three year period to determine whether or not to bring that suit. In certain cases such as sexual abuse the injured party may not be aware that they have been injured and that is when the discovery doctrine is applied. A typical example of the discovery doctrine arises in malpractice cases where during surgery a surgical gauze or sponge is left in the patient but the patient may not know for years In such cases the courts and legislatures decided that the injured parties right to recover does not begin to run until they are aware that they have been injured. This same rule should be applied to sexual abuse where often the party does not know that they have been injured. This bill does not insure that the person that they will get recovery for that injury but at least leaves the courtroom door open for them to come in and show that they did not know or had no way of knowing until they discovered it.

John Connor concurred with the above testimony and urged the committee to act favorably.

Susan Swineheart stood in support of this bill (EXHIBIT 16).

Megan Hill urged support of SB 157 (EXHIBIT 4).

Brenda Nordlund stood in support of SB 157 (EXHIBIT 17).

Noel Larrivee spoke on behalf of the children that are abused and neglected. Our state Supreme Court has sent a message to the Legislature to take action and extend the statute of limitations. Their recent opinion made it clear that they empathized with the victim in bringing the civil suit and have asked the Legislature to affirm SB 157 and give others an opportunity for economic redress. He spoke of two cases. One case involved an eight year old girl who was tied to a bedstead and assaulted with a carrot by her mother explaining to her that this is what her grandfather had done to her and she wanted her daughter to have the benefit of that same experience. The second case involved a 28 year old woman who was charged with setting the apartment building on fire where she and her two year old son were living in an attempt to commit suicide. Her first attempt to commit suicide was when she was ten years old by drinking Drano. Her abuse started when she was four years old. The passage of this bill is not a deterrent but a judgment being awarded might be a deterrent. Often the criminal prosecution is not enough and this bill allows the victim a different standard of proof to go to court and assert a claim for damages. It puts the economic consequence of the wrong where it belongs - on the offender. For these reasons and the many children that are in the system he urged passage of SB 157.

Janet Allison stood in support of SB 157 (EXHIBIT 18).

John Madsen stated that it is clear that if some of these victims begin to receive treatment and compensation then the cycle may be stopped in some manner. The costs to the victim are extremely high and the offenders at some point must bear some of that cost. Our society needs to hold them accountable.

Christie Marron asked that her organization go on record in support of this legislation.

Toni Nikolas reiterated previous testimony and expressed a hope that this legislation would tip the scales in favor of the kids instead of the offenders.

Holly Kaleczyc stated that the Superintendent of Public Instruction believes that this time barrier of justice must be removed and urged the committee to support SB 157.

Leslie Burgess urged support of this legislation (EXHIBIT 19).

Elizabeth Williams stood in support of SB 157 (EXHIBIT 20).

Susan Kraft Ball urged support of SB 157 (EXHIBIT 21).

Marti Adrien stood in support of this bill (EXHIBITS 22-26).

Lewis Pepples urged passage of SB 157 (EXHIBIT 27 - petition).

Testifying Opponents and Who They Represent: None.

Opponent Testimony: None.

Questions From Committee Members: Rep. Eudaily asked Sen. Nathe if there was a reason why SB 157 has an effective date of October 1 and SB 122 is effective upon passage and approval. Senator Nathe deferred the question to Jean Kemmis. Ms. Kemmis stated that the original proposal was that both bills would be effective on October 1 and when the criminal bill applicability section was changed Legislative Council made the effective date immediate simply to allow more cases to be prosecuted. Allowing more cases under both bills is an advantage, but is not particularly insistent on one and not the other.

Rep. Eudaily asked Ms. Kemmis if the retroactive section is the same in both bills. Ms. Kemmis stated that the criminal bill is effective in extending the statute of limitations for all prosecutions for which the current statute is not yet expired. The civil statute of limitations applies to all cases filed after the effective date. It will apply to all cases in which discovery of those delayed effects took place within the last three years. It does not open old cases beyond those that have been discovered during that three year period.

Rep. Boharski asked Sen. Nathe if in the criminal bill the statute of limitations for any criminal redress is five years or maximum of 23 years old but in the civil bill it goes forever. Sen. Nathe stated that it goes for a time that the victim should have reasonably discovered the problem - potentially it could be forever. Until these people are in therapy they do not discover what their problem was and are precluded from having access to the courts. Ms. Kemmis stated that the justification for the difference has to do with how we view criminal law. We have always been more restrictive in the area of criminal law since the penalties are incarceration or counseling so that those who wish to prevent child abuse may wish to have the statute of limitations the same for both bills but we recognize that in the area of criminal law the public law is to be more restrictive.

Rep. Hannah asked Ms. Kemmis how the act would be proven twenty years later or will this actually accomplish proof to find the perpetrator guilty. Ms. Kemmis stated that in the criminal situation the delay, at most, is 23 years of age. Depending upon when the abuse occurred the actual years of delay may not be any longer than under the current statute of limitations. In the civil area there is no question but that proof becomes more difficult with the passage of time but there are a lot of cases in which review is allowed much

later such as when the surgical sponge is discovered, a dam breaks because there hasn't been a flood in twenty years and the question of construction goes back twenty years. There is difficulty in delay whenever a case is brought later but there also is no opportunity under the present law where the proof would be sufficient and strong and they would go forward.

Rep. Hannah asked Ms. Kemmis if in the majority of cases if there is little physical evidence carried forward in the civil side twenty years after the act was committed. Ms. Kemmis stated that in the case that went before the Montana Supreme Court there was a doctor's record that at the age of twelve the young girl was examined and found that she had been penetrated so that sort of record does go on. In most cases there is not going to be as good a record as that. There will be some cases where the plaintiff will be able to go forward and that plaintiff will need to have the psychological evidence to support her delayed discovery.

Rep. Brown asked Ms. Kemmis if he understood correctly that this bill allows provable cases to be brought forward. Ms. Kemmis stated that presently there is no opportunity and perhaps with opportunity it is an uphill battle but at least people can get into court.

Rep. Addy stated that he had seen charges of sexual abuse in a divorce setting by one of the spouses and perhaps this would be setting up a second situation where there is a motive to raise these kinds of charges in a probate setting. Ms. Kemmis stated that the situation of the law allowing a suit against an estate would be the same as it would be in any other tort action so that if a person discovered that a sponge had been left in by a doctor and the doctor died six months ago there would still be the opportunity to sue that doctor. The same would hold here. If a suit were brought against a deceased abuser the jury would have more difficulty finding for the plaintiff because of the natural skepticism about the evidence. But it would be reviewed by the jury in the same way that all other issues would be reviewed by the jury.

Closing by Sponsor: Sen. Nathe stated that Sen. Dick Pinsoneault was unable to attend but asked that he be registered as a proponent of this bill. These two bills grant time to these victims and access to the courts by allowing more time.

DISPOSITION OF SENATE BILL 157

Motion: Rep. Gould moved SB 157 BE CONCURRED IN. Rep. Darko seconded.

Discussion: Rep. Hannah asked if there had been any discussion in the course of this bill for limiting the time - for as long as this victim is alive this action can be brought

forward. Rep. Brown stated that upon discovery by the individual, potentially it can go on forever. The opportunity can go on forever but it is a sufficiently heinous crime to warrant it.

Rep. Boharski stated that this could go on forever if there is cause. In a situation where the abuser has died, someone could bring a lawsuit against his estate and his children would be liable for whatever civil damages. Rep. Addy stated that would occur very rarely. The situation that he sees for nasty fights in probates is when it is a stepmother or stepfather sharing the estate with the natural children of the deceased. The concern is that allegations of sexual abuse are proven upon being spoken, not legally, but as a practical matter, to be accused is to be found guilty. Most employees of the federal government are fired upon an allegation or accusation that they have engaged in some form of molestation or abuse. Uniformly the bills before this committee that have come in to address this problem have sought to do it not by providing treatment or increasing the crime victims funds that might be available for therapy but by eroding civil rights in this one area because this crime is so heinous that watering down of civil rights is justified and it is a dangerous precedent. Rep. Boharski agreed that to be accused is to be convicted.

Rep. Stickney stated that currently there is no redress for someone who does discover the sexual abuse and this bill is a small step toward allowing that to be changed.

Rep. Darko said that this bill has some built in safeguards. In order for them to be able to bring suit they have to prove that the sexual abuse occurred and that will be hard to do if it occurred many years before.

Rep. Hannah disagreed and did not see any safeguards in the bill. Many suits are brought in a variety of areas that are settled out of court. Sometimes it is easier and cheaper to resolve and settle rather than try to prove innocence.

Rep. Eudaily asked John McMaster about page 2, lines 5 through 7, "three years after the plaintiff has discovered or reasonably should have discovered" - which is the most restrictive. John responded that "reasonably should have discovered" is more restrictive. If they should have and didn't then they have lost the cause of the action. Rep. Eudaily stated that "or" is what is bothering him because the plaintiff "discovers" but it doesn't say how or what has caused them to discover that. Rep. Brown said that in the Supreme Court case that was discussed here today is probably a good example of the individual knowing and talking about it before a suit was brought. That would probably be referred to as "reasonably should have known".

Rep. Brown asked Rep. Addy about his comments on federal employees and the basis for that comment. Rep. Addy stated that there are people employed by the federal government that are either in sensitive positions for handling money or information, and if you are in either one those two kinds of positions this kind of allegation compromises you to such an extent as to destroy your reliability. Rep. Brown responded that he would like to be a lawyer for the lawsuit. Rep. Addy stated that when you are in a position of trust and there is this kind of allegation, whether or not it is true, it better be cleared up before you get the key to the money drawer or the vault with classified documents. People who are in that position can be destroyed by that allegation. They also have no rights in a custody dispute as a result of that.

Rep. Hannah asked if there was any testimony that came forward indicating that this is being done any place else to this degree. Rep. Brown stated that there was. Rep. McDonough responded that it was in the last legislative session in Washington state and it is pending in several others. Rep. Hannah asked if they were considering legislation with no limits past the point of discovery. Rep. McDonough responded that was correct.

Rep. Rice addressed Rep. Boharski's concern about the probate situation and the risk of someone coming in and filing a claim after dad had died hoping to use it as leverage to get more of the estate. It is not possible under the definition under the law and the timing would have to be terribly coincidental for her to have discovered the harm of the abuse and dad to die within that period time. The problem of it going on forever or allowing this opportunity to file a suit forever is not going to happen. The effect of allegations upon someone's career is true with all criminal offenses in the law and that's unfortunately a problem that goes with our system of justice and that is why we have fair trials and days in court. It is a good bill and the problems discussed by the committee are more fanciful than real.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion CARRIED with Reps. Addy, Hannah, Boharski and Aafedt opposing.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 6, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 6, 1989

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 157 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. DAVE BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

SB 157 EXHIBIT 16
DATE 3/6/89
SB 157

Mar 6, 1989
House Judiciary Com

Mr. Chairman and members of the committee, my name is Susan Swinehart. I hold a Master of Social Work degree and work as a psychotherapist on the Psychiatric Unit of St.Peter's Community Hosptial here in Helena. In my position at St.Peter 's I run a program for survivor's of sexual abuse who are patients on the psychiatric unit. I am here today on behald of the Montana Association of Social Workers in support of SB 157 to extend the statute of limitations so survivors of childhood sexual abuse could bring civil suits after discovery that the problems they are encountering in later life have their origins in sexual abuse during childhood.

You have heard previous witness testify to the devastating, long-term effects of child sexual abuse. I am here to lend support to that information and to provide additional information regarding the level of support services which survivors often require - services which often fall to the state to provide. In the rough statistics I have been keeping during my almost two years at St. Peters, I have discovered that between 85%-90% of the patients I am assigned to have underneath a myriad of presenting problems ranging from chemical dependency to psychotic thinking and psychiatric diagnoses ranging from conduct disorder in an adolescent to a major depression in an adult, a history of childhood sexual abuse. Attempts to deal with the real life consequences of such abuse often pushes individuals into a series of emotional crisis which require hospitalization in a unit such as the one where I work at St. Peter's. Of the patients I treat with a history of sexual abuse, suicidal crisis are not uncommon nor are multiple hospitalizations as a patient comes to understand and begins to work through the roots of the difficulties they are experiencing.

Although childhood sexual abuse cuts across all social and economic lines, at the time of first admission and sometimes for subsequent hopitalizations, the majority of my patients who have this type of history are unemployed women and men. Accordingly, when services are required, it falls to the state to provide them. Following is a list of the services funded directly or indirectly by the State to which I have referred such patients.I have referred patients to the Department of Social & Rehabilitative Services for public assistance - either GA or AFDC; for Medicaid to pay for hospital and other medical bills (patients with a history of sexual abuse are often so out of touch with their bodies and particularly with feelings of pain and discomfort that they have all manner of untreated medical problems) and for psychotherapy which very often must continue for many years; for adult education to complete high school equivalency; for vocational counseling and career training through voc rehab. I also refer patients to the Department of Family Services for child protection when I have a current child abuse situation; for foster care for the children of sexual abuse survivors who don't have the first clue how to parent and are trying to figure it out or who are so overwhelmed with flashbacks and nightmares about the abuse they suffered in the past that they have no energy left to parent; to adult protective services

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for assistance in handling complex aftercare plans that involve a multitude of services for an adult who was abused as a child; to the Friendship Center for shelter from a curently abusive relationship; to the youth group homes for shelter from an abusive family when foster care cannot be found; for adoption services when a parent decides it will take too long for them to be able to parent effectively given the level of their own abuse and have decided to place their children for adoption so they might have a better chance;(I have also worked with a number of survivors referreed from the Critendon Home for unwed moms - ~~very~~ ABUSED children learn that young bodies are for sex). I refer patients through the court to the Department of Institutions for WSSH for long term inpatient psychaitric treatment because an individual cannot keep themselves safe from their own distructive thoughts - thoughts which began while they were being sexually abused where they often felt suicide to be their only way out; to Galen and the Lighthouse, alcohol and drug TX facilities to teach an individual how to come out of the emotionally numb state they have used, often since childhood, to survive the painful memories; to Mental Health Services, Montana House, and Transition House for therapy, day vocational programs and a transitional living situation for persons too fragile to handle the demands of independent living. (I have also worked with patients with sexual abuse histories who were bound for DeerLodge, Pine Hills and Mountain View because the anger and rage they carried with them from childhood had been turned on the society.) I also refer patients to the Department of Health for services through the Family Planning Clinic - patients who have had their sexual boundaries shattered in early childhood never had the opportunity to learn how to say NO and have that word respected when it came to matters of who touched their bodies and how so they remain at high risk of involvement in "promiscuous" sexual behavior which puts them at high risk for unwanted pregnancy or VD.

The cost of providing such services places a burden or the State which should be properly borne by the person responsible for causing the problems leading to the need for such services. SB 157 is a necessary step in enabling that to happen. I strongly urge your support of this needed legislation. Thank you.

MONTANA WOMEN'S LOBBYIST FUND

EXHIBIT 17
DATE 3/6/89
HB SB 157

P.O. Box 1099 Helena, MT 59624 406/449-7917

Testimony in Support of SB 157
House Judiciary Committee
March 6, 1989

My name is Brenda Nordlund and I appear on behalf of Montana Women's Lobby in support of SB 157. Our support is based, in part, on the following factors:

1. The Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. The psychological associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

2. Public policy considerations underlying the use of the discovery rule support its application in cases of this nature. Analogy can be drawn to causes of action involving "breach of trust" and "fraudulent concealment", where the discovery rule is applied in Montana. [See, Sklerka v. Sklerka Bros. Inc., 629 P.2d 214, 218 (Mont., 1984), Monroe v. Harper, 164 Mont. 130, 136, 518 P.2d 788, 790 (1974); and Keneco v. Cantrell, 174 Mont. 130, 136, 568 p.2d 1225, 1228 (1977).]

The same policies justifying application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Likewise, drawing comparision to fraudulent concealment cases, an adult's failure to disclose to the child essential information about a child's rights and limits on the adult's rights—or plain deceit on these matters—may be treated as a fraud upon that child.

Secrecy is a common thread in these causes of action, and is equally prevalent in childhood sexual abuse cases.

3. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. That concept is clearly relevant in childhood sexual abuse cases. [See, Urie v. Thompson, 337 U.S. 163, 170 (1949)]

It is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. Most victims will be unable to connect their injuries with the abuse for many years. Injuries related to childhood sexual abuse often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves clearly until adulthood. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed.

Discovery of the cause of a childhood sexual abuse survivor's injuries can take years. Many victims are convinced that they are to blame for the abuse. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim is thus "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of action of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

4. Finally, and perhaps most importantly, no public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. Civil suits act as a deterrents to unacceptable behavior. Our hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

Survivors of childhood sexual abuse deserve an opportunity to present their cause of action. SB 157 will afford them that opportunity. We urge a do pass recommendation for SB 157.

EXHIBIT 18
DATE 3/6/89
SB SB 157

S.B. 157

I am Janet Allison, Ph.D., a licensed psychologist from Missoula. I am here to testify on behalf of S.B. 157, based on my past decade of intensive work with child sexual abuse victims, offenders, families, and adult survivors. I also represent the Montana Psychological Association in its support for this legislation. It has only been in the past ten to fifteen years that we, professionals and the general public, have come to recognize the scope of this problem. Researchers have found that at least 33% of girls,and at least 20% of boys, are sexually abused by the time they reach adulthood.

The long-term effects of child sexual abuse on victims often require extensive psychotherapy. Although the need for psychotherapy is caused by the abuse, survivors almost never receive compensation for therapy expenses from their offenders. The statute of limitations runs out long before victims are able to file a lawsuit, because of the psychological realities that are part and parcel of the experience of child sexual abuse. These psychological realities would be explained in detail in front of a jury, if S.B. 157 were to become law and if a survivor were filing suit. I will attempt to outline them only briefly for you here.

It is clear, from the literature and from my clinical experiece, that there is a constellation of symptoms that generally result from sexual abuse by a trusted authority figure. Often some or most of these symptoms are latent until well into adulthood--that is, they don't appear or don't develop their full intensity until the survivor is grappling with adult stresses such as marriage, raising children, etc. These long-term negative effects include: chronic depression, low self-esteem, chronic irrational guilt, suicidal and other self-destructive thoughts and behaviors, inability to trust, lack of assertiveness, difficulty with intimate relationships, sexual problems and dysfunctions, disassociation of self from experience, recurrent nightmares, flashbacks to the abuse, disproportionate negative reactions to certain persons and events, eating disorders, alcohol and drug abuse, promiscuity, involvement in prostitution, the tendency to be revictimized, and the tendency to victimize others.

The victim/survivor of child sexual abuse suffers more and more from these increasingly chronic symptoms. And yet she or he has no way to connect them with the earlier experience of sexual abuse, without some form of expert input. This usually occurs through work with a psychotherapist who can

point out the connections, or sometimes through magazine articles, TV shows about sexual abuse, public presentations by experts, etc. But without education from an outside expert source, no one would recognize that a group of several of these symptoms strongly suggests the likelihood that child sexual abuse is the cause--and, prior to the past fifteen years, no one did recognize that connection.

Sexual abuse survivors have specific impairments that make them even less likely to connect their symptoms with their history of sexual abuse. The secrecy, which surrounds the abuse and is imposed by the offender, ensures that the victim has no perspective on the sexual contact except for what the offender communicates--and the offender doesn't tell his victim that his behavior is destructive to her. Also, the offender's authority and his position of trust put the child in a terribly helpless, powerless position. Unless someone somehow intervenes and offers protection for victims, they are forced, for their own survival, to find ways to accommodate to the ongoing abuse.

The "child sexual abuse accommodation syndrome," first described by R. Summit in 1983, develops out of the victim's need to cope with the contradiction between what the perpetrator is supposed to be (good, loving, trustworthy) and what he is doing (which is painful, confusing, and bad). The healthy, normal child who is subjected to this ongoing contradiction accommodates by viewing the perpetrator as good, to avoid the emotional devastation of experiencing an essential caretaker as bad. And so the only acceptable option for the victim is to assume responsibility for the abuse. Naturally, this leads to many of the symptoms that I have already listed--the rage over the victimization is suppressed and internalized, leading to self-hatred and self-destructiveness. Victims not only behave in various self-destructive ways, but come to feel guilty about everything bad that happens in their lives. They assume that their many problems are somehow their own fault, and have not the slightest understanding that those problems were caused by the offender's behavior.

What is more, accommodation to the intolerable anxiety, pain, and confusion of sexual abuse often includes actually repressing the memory of the abuse altogether. Many survivors of sexual abuse develop amnesia so complete that they simply do not remember that they were sexually abused at all; others remember only one or a few incidents out of the years of abuse they endured. Obviously, until survivors recover their memory of the abuse, they have no way of seeking compensation for its effects. This usually occurs many years later, with the help of a psychotherapist who suspects sexual abuse may be the cause of their constellation of symptoms.

Even if, somehow, a young survivor of sexual abuse discovered the nature of his or her injuries and their causes in time to file a lawsuit by the age of 21, there is probably no chance of the suit actually being filed. I have only seen one survivor in all of my experience who reached the point of even considering bringing suit against her offender at the age of 21. (In this case, the offender had been only a temporary member of her family.) This young woman certainly did not have the psychological strength to follow through with taking such action. Adolescents and young adults are still too immature and too emotionally attached to their families to be capable of this type of action against family members or close friends. In my professional opinion, probably less than five percent of incest survivors could, mentally and emotionally, even consider filing a lawsuit against their offenders by the age of 21; I doubt that any would be capable of actually filing and following through with such a suit by that age.

In fact, very few survivors of any age would actually file lawsuits against their offenders. Bringing suit against a family member or close friend brings tremendous stigma, family and social disruption, and pain to the plaintiff, especially when sexual contact is involved. The long, hard process of carrying such a lawsuit to completion would demand emotional reserves and resilience beyond what many sexual abuse survivors have, even after extensive psychotherapy.

I want to stress that, unless there are real external consequences for molesting, offenders are almost certain to go on sexually abusing children. This legislation offers the potential for financial consequences as well as having the behavior exposed. Also, there would be real deterrent value for potential molesters who foresee these possible consequences.

S.B. 157 would give survivors access to the courts, access they now are effectively barred from, so they could seek compensation from those who are responsible for their injuries. In the vast number of sexual abuse cases in which criminal prosecution cannot occur, this would create one other way for us as a society to communicate that we hold child molesters responsible for their crimes against children. I urge you to support this important legislation.

EXHIBIT 19
DATE 3/6/89
SB 157

Leslie Burgess
Missoula, MT

SB 157

My name is Leslie Burgess. I am a survivor of incest. I had a complete memory block until I was 32 about the incest that I experienced between the ages of 4 to 7. I did not remember what had happened to me. When I was 32 I sought therapy because I was depressed and suicidal and very concerned about my inability to form or maintain intimate relationships. It was after nearly a year of therapy that I started to recall my memories. I believe that it became safer to remember because I was older, far away from the situation in time and space and had the support of my therapist. Remembering enabled me to finally work through the pain and begin the long healing process.

I now remember the abuse as starting when I was four. The last incident of abuse that I remember was when I was seven. During that time period, I was fondled, masturbated upon and forced to "perform" oral sex. I had my privacy invaded when I was bathing and when I was sleeping as well as at other times. I was told that if I told anyone, my younger brother would die. I was four years old and I believed it.

As a young adult I abused alcohol, drugs and food and I was very sexually promiscuous. I suffered a long-term depression and made two suicide attempts between the ages of 18 and 25. I had extremely low self-esteem and I was in a brutal battering relationship for almost four years. I didn't remember at that time that I had been sexually abused as a child and it wasn't until I was 32 and in therapy that I realized that my problems were a result of the childhood sexual abuse I had experienced.

At this point I have a tremendous time, energy, and monetary investment in healing so that I can realize some of my potential as a contributing member

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of society. It would be appropriate for the abuser to bear the financial burden, at least, of the cost of my therapy. However, to use the court system to allow me to do so is impossible for me because of the statute of limitations. I had no memory of the incest until I was 32 but the current law requires me to have taken action by the time I was 21. Blocked memory is certainly a factor that needs to be taken into account in reassessing the law in regard to the statute of limitations because it makes impossible the option of pursuing civil suit until such time that memory is recalled.

I hope that you will consider that the discovery rule is applicable to incest. For someone in my position, this addition would be the only way that I could recover damages for the cost of therapy from my abuser at the time that it was possible for me to do so - when I was an adult and after I recovered my memory and connected my problems as an adult with what happened to me as a child.

TESTIMONY IN FAVOR OF SENATE BILL #157

EXHIBIT 22
DATE 3/6/89
SB 157

Mr. Chairman and Members of the Committee:

My name is Kay Reddish. I'm 34 years old and I live in Missoula County. When my stepfather first sexually abused me at nine or ten years old, I was in bed. I pretended to be asleep because I was so horrified. The next day I acted like everything was OK because I really wanted it to be. After the second sexual abuse, my stepfather warned me not to tell my mother. He said telling her would only make it worse. Since my stepfather had in the past protected me from physical and emotional abuse by my mother, I felt not telling was the lesser of two evils. But the confusion of my former abuse protector turning into a sexual abuser made me feel abandoned.

Initially the sexual abuse involved manipulation (breasts, genitals, etc.), using sexual language like a lover would use, and making me manipulate him. This occurred in private. Some abuse, such as covert fondling, continued even with other family members present which was humiliating. There were no "safe" times when I didn't worry about being assaulted. The abuse continued for some time -- I'm not sure how long due to memory lapse. I felt awful; bad, ashamed, like somehow I deserved this abuse that I sensed was wrong.

My sister disclosed the abuse to our mother who then questioned my stepfather. He admitted it and said the abuse would stop but it continued on a lesser degree (brushing my breasts supposedly on accident, peeking through doors, and constant innuendos). I felt overwhelmed and insecure never knowing where or when I was safe. I avoided my stepfather whenever possible but never dreamed there could be any help, especially legally.

After that I was subjected to many abusive behaviors by my mother. She made as many, if not more, threats to guarantee secrecy and to protect my stepfather. The effects of her not protecting me and then blaming me for the sexual assaults caused even more emotional damage. I internalized the effects by daydreaming of

dying. I didn't know there were laws to protect children. I only knew that my protectors were my parents and in this case they were also the abusers.

Finally, after four or five years of this covert abuse, my sister and I were able to talk about it with each other since she was also a victim. We would stay awake at night, standing guard, to see if our stepfather was coming into the room so we could protect each other from him -- something no child should have to do. We became emotionally exhausted.

We were attending a church high school youth camp when my sister and I first told outsiders about the sexual abuse. We decided to run away because the youth directors assured us safety and protection. We stayed with church leaders a couple of days, then the police picked us up and took us to juvenile hall. That was horrifying for me. I was put in a cell, stripped and given jail clothes to wear. I was booked and fingerprinted -- treated like a criminal further reinforcing the guilt imposed by my mother. We told the authorities the reason we ran away was because of sexual abuse. They didn't say or do anything.

The next morning our stepfather and mother came to get us. I was terrified and felt my life was in jeopardy since the authorities, our last hope of protection, were willing to send us back to an abusive home. Our stepfather promised the probation officer he would get help for him and us, though we never received it. Not having stood up for myself before, I was petrified at the thought of going back home. Picture your most horrifying fears coming true and you'll sense the fear I felt that day.

The whole thing was smoothed over as if nothing had happened. In the name of secrecy, my other siblings were never permitted to know the reason why we ran away. My feelings were invalidated. The idea that sexual abuse was "no big deal" was enforced even further. There was no one to turn to for help.

Before the abuse happened, I wanted to go to college and be a teacher. After the abuse, all that mattered was being as safe as I could while I had to live there and to move out as early as possible -- which I did by marrying at 17. I just wanted to get all that behind me and make a new life for myself.

EXHIBIT 20
DATE 3/6/89
SB 157

Mr. Chairman, Members of the Committee, I am Elizabeth Williams. I am 37 years old. I was sexually assaulted from the time I was 5 until I was 12. Intercourse was forced upon me beginning at the age of 9. An overwhelming fear of abandonment; a paralyzing fear of adult anger; and threats made by my abuser that he would kill a member of the family if I told, kept me silent about the abuse until I was 12 years old. At that time I told a friend of my abuser's actions. Upon disclosure, a family meeting was held at which my abuser was confronted with having sexually molested me. He denied having had any type of sexual contact with me. Many adult family members expressed shock and anger that I would fabricate such a story.

From that point on, I was labled a liar, and a trouble maker. I was forbidden to have contact with my abuser, his family, and all other extended family members. I was accused of having had sexual relationships with boys at school. I was forbidden to tell anyone about the abuse and all open reference to the abuse was terminated. My immediate family shunned me. I was treated with contempt and greeted by silence. All of this produced confusion, shame and guilt within me. Looking back now, as an adult, I realize I was faced with conflicts and contradictions that my child's mind could not begin to grasp.

I spent much of my youth trying to deal with the disruption I felt I had caused within my family and with the resulting isolation and condemnation. It is unthinkable that I could have brought civil suit against my abuser when I was between the ages of 18 and 21, for I firmly believed that I had wronged the family and especially my abuser. In my mind, I was to blame. I felt responsible for the incestuous acts themselves; I felt responsible for telling my "secret" to a friend, whil at the same time not telling someone sooner; and I felt an overwhelming burden of responsibility for the trouble I had caused my abuser and my family. Therefore, I wanted to place the entire matter behind me and get as much distance from it as possible. My overall reaction to memories of the incidents of sexual abuse and the events surrounding my disclosure was to forget them. By the time I was 17, I had no specific memories of the incidents and recollections of my childhood in general were vague. I left home at 18, married someone I had only known for 2 weeks, and began a family of my own.

Between the ages of 18 and 21, I was an unusually distressed young person who had very little comprehension of my problems. I had no idea that what I thought were not unusual mood problems, would later turn into severe depression and suicidal intentions. I had no way of knowing that later I would develop extreme marital problems in this marriage and in a subsequent marriage.

Between the ages of 18 and 21, I obtained prescription drugs to help deal with family distresses. I did not know that 10 years later I would be so dependent on drugs, that I could not make it through a day without them.

I had no idea that my frustrations and anxieties about parenting would lead me to follow the pattern of abuse that had been used on my. As a very young parent, I had no way of knowing that my emotional problems would become so bad that I would physically and emotionally abuse my own children.

Although I had experienced difficulties between the ages of 18 and 21, I had no idea that my emotional problems would later grow so severe that they would nearly destroy my life and the lives of my husband and children.

As an adult I have had extreme difficulty establishing and maintaining relationships of trust. I have had many sexual problems including promiscuity. I have suffered chronic insomnia caused by the same terrifying, repeated nightmare.

In my early 30's I began having even more terrifying nightmares; severe episodes of suicidal depression; and feelings of suffocation during marital relations. My marriage quickly deteriorated and in November of 1983 I sought counseling with Dr. Allison to confirm my decision to divorce my spouse, and by so doing, put an end to my problems. During our first session, much to my surprise, Dr. Allison suggested that my difficulties most likely stemmed from my incestuous childhood rather that from my marriage.

The most difficult thing for me to come to terms with in therapy, was that I was the victim and not the perpetrator of the sexually abusive relationship with my abuser. My resistance broke down somewhat in therapy, as I realized that my experiences were much the same as other adults who had been victimized as children. As my therapy progressed, I began to think more and more about responsibility.

I had spent thousands of dollars for counseling; I still had bills to pay; and I knew I needed more counseling, which would cost me more. I felt my abuser should at least be required to pay a portion of my counseling fees. I decided to file a civil suit against my offender. The District Court Judge stated in his decision, that my action was barred by the Statute of Limitations Law. I appealed to the Montana Supreme Court. That court agreed, but they recommended that the legislature change the Statute of Limitations Law to allow such actions.

I appeal to you at this time to pass the bill now before you and give adult survivors of sexual abuse in this state the opportunity to place responsibility for the acts committed against them as children squarely on the shoulders of their abusers. I appeal to you to allow these survivors the opportunity to force their offenders to help pay for their recovery, which costs thousands of dollars.

I am aware that passage of this bill will in no way effect my case against my abuser, for it is closed. My hope in testifying before you, is that other survivors will have the opportunity to sue their offenders. I urge you to pass Senate Bill 157. Thank You.

EXHIBIT 20
DATE 3/6/89
SB 20

SB 157 - Revised Civil Statute of Limitations for Child Sexual Abuse

My name is Susan Kraft Ball. I am 31 and a survivor of childhood sexual abuse. Although Montana has been my home for 10 years and I discovered my abuse less than 3 years ago, passage of this important legislation will not help me personally. Montana law would not apply to my case because my abuser lives in another state where the molestation also occurred. My motivation for this testimony is that I feel compelled to do whatever I can to help prevent even <u>one</u> child from having to experience the trauma and lifetime consequences of sexual abuse. I also want to help child victims and adult survivors to have access to the courts in order to have the opportunity to place the burden of responsibility for abuse and its resulting damage on the violators rather than on the innocent victims. I hope that my own history might give you some insight into the dynamics of sexual abuse and its consequences, and help you understand why the legislation before you needs to be passed.

My father was manic/depressive and from the time I was 8 or 9 until his suicide when I was 15, he was tortured by prolonged periods of suicidal depression and hospitalization, and brief manic episodes. My mother had to work full time and was preoccupied with my father's illness and suicide. I was the youngest of 3 sisters, and we all focused our lives on trying to help our parents. I did not understand what was happening to my father and family; I felt abandoned, confused, responsible, and desperately in need of love and attention. My abuser was a close family friend, lay minister, and lay counselor. My mother was dependent on him as a trusted advisor, confidant, and, after my father's death, lover. My sisters and I were also dependent on him as our primary source of nurturance - as a "surrogate" father.

I believe my molestation began when I was about 12, as this father figure very gradually introduced fondling and intercourse into our relationship. He told me not to tell because my mother and other people would not understand that he was just helping me discover my inner-self, my unique beauty, and my sexuality. He told me

he "could be charged with statutory rape, go to jail, and lose everything he had, and I didn't want that to happen did I?". I felt more confused and guilty, and experienced a great deal of anxiety with each sexual encounter. I didn't know how to stop him without risking his rejection. I felt trapped by my family's emotional dependence on my abuser and feared further abandonment if I said anything or told anyone, so I remained silent. The abuse continued past my 18th birthday; even after I left home for college and work, the pattern of abuse and secrecy remained unbroken and would be repeated every time I returned home to visit. The longer it continued the more responsible I felt for meeting his needs, for the continuation of the abuse, and for maintaining the secrecy, and the guiltier I felt for not being able to stop it.

I now understand that I learned to cope with the repeated trauma through: 1) rationalization - "Since everybody trusts and loves him, this must be OK, and it must be good for me because he tells me it is..."; 2) minimization - "He isn't physically hurting me, therefore I can do this small thing for him, besides his needs are more important ..."; 3) splitting - I hid my inner turmoil by presenting a public image of what I thought people liked, I only acknowledged to myself and others the positive aspects of my relationship with my abuser, and I would disassociate from my emotions and even from my body during the actual abuse - like watching a scene from a movie; 4) denial - I denied my feelings - they were too confusing and painful, I denied that there was anything negative or unusual about my relationship with my abuser, and I denied to myself that the earlier abuse took place, and 5) escape - I escaped my feelings and thoughts by "spacing out" for hours on end in front of the television set.

I had memories and flashbacks of the fondling and intercourse I had experienced primarily during episodes of abuse and during intimate or sexual experiences in my

adult years (I rarely dated during my teen years). I had never told anyone of my experiences nor did I comprehend that what I had experienced was molestation or incest (clinical definition) until after I was forced to disclose those experiences to my mother in the Spring of 1986 and to her counselor in June of that same year. My mother had found out while on a romantic vacation with my abuser the summer before, when he remarked on how fascinating it was that she made love just like her daughters. After several months of personal counseling, she confronted my sisters and I with this information and flew us home to discuss it as a family and with her counselor. During that family meeting I discovered that my sisters had also experienced similar long-term abuse and we recently confirmed that a female foster child had also been molested by this same person in our home. My mother's counselor convinced me that I had indeed been a victim of sexual abuse and suggested that I seek professional help when I got back to Montana to help deal with some of the inevitable consequences. Some of the consequences I have experienced include: susceptibility to repeated victimization, confusion about sex and intimacy, splitting and sexual dysfunction, depression and low self-esteem, and chronic headaches and nausea.

For several months after returning to Montana I tried unsuccessfully to block out the memories and feelings that came flooding back into my mind after so many years of suppression. I believe that had I not been forced to disclose, and had I not received counseling that helped me recognize the connection between my abuse and its repercussions in my own life, I probably would have maintained the secret for years until later life crises would have lead me to examine the causes. But it was like opening Pandora's Box - once the secret was out, the ugly and painful realities of my experiences and their consequences could no longer be pushed back into "safe" dark corners of my mind. I had to start dealing with them, and that has been an extremely costly, time consuming, disturbing, and painful process. I have been in

individual, group, and marital counseling for 2 years. Sometimes I find myself wishing I had been paralyzed in an accident so that I would have some physical basis for my sexual dysfunction. Many times I have wished for my life to end so that I wouldn't have to feel or deal with it anymore, and so that my husband and our relationship would be free of its torturous impacts. It is an agonizing process to unlearn the lessons of the past and learn how to live as a functional, healthy person. I read everything I can on the subject, which, in addition to therapy, helps me understand that even though the influences of sexual abuse never go away there are ways of lessening its hold on my life.

I have recently made the very difficult decision to initiate a civil suit against my abuser in the State of Colorado. My abuser has not indicated any remorse or willingness to take responsibility for his acts of abuse, and has continued to place himself in a position of trust with other vulnerable children. I therefore felt it was necessary to go through the legal process to attempt to place legal, moral, and financial responsibility where it properly belongs, and to do what I can to make sure this chronic abuser doesn't hurt any more children. However, the lower court has ruled that the statute of limitations started running when I turned 18 regardless of the continuation of the abuse or the date of "discovery", similar to the present interpretation of Montana law. I am currently appealing that decision and hope that I will not be permanently barred from the justice system while my abuser escapes responsibility and potentially continues his abusive behavior unchecked.

Unfortunately, because of the dynamics of child sexual abuse, current Montana law effectively bars most victims due access to the courts and inadvertently protects child molesters. This legislature has the opportunity to make a positive difference in the lives of many innocent victims. You can help make Montana a better, safer place to live and grow-up. Please vote <u>for</u> this legislation. Thank you.

EXHIBIT 23
DATE 3/6/89
SB 157

TESTIMONY--SENATE BILL 157, SENATOR DENNIS NATHE, SPONSOR

Mr. Chairman, Members of the Committee:

My name is Fay Dozier of Reedpoint, Montana. You may recall that I previously testified on SB122. I am unable to give oral testimony on SB 157, but want my testimony on the record.

As I previously testified, I was sexually abused for 13 years. I had devastating emotional problems for many years after the abuse stopped. I sought help from various therapists for those problems from the time I was 18, but they always treated the symptoms, never the problem. I later came to call it "bandaid therapy". Throughout the years, I also suffered many physical problems, but the physicians could never find anything medically wrong with me.

In September of 1980, at the age of 30, I was suffering so greatly from severe depression, increased alcohol abuse, self-hatred and thoughts of suicide, that my husband had to force me to go back into therapy. I spent six months with an individual therapist. He seemed to give some credence to the possibility that the sexual abuse might have something to do with my problems. At the end of six months, he referred me to a therapist who conducted group therapy sessions for adult, female sexual abuse victims. By this time, I was 31 years old. I spent from March of 1981 to October of 1984 processing through my feelings of rage, pain, fear, guilt and self-hatred. During that time, I learned that my behavior and problems (both physical and emotional) were common characteristics of sexual abuse victims.

Not only was my recovery a long and painful process, but it was also a financial hardship to my family. The cost of the therapy from 1980 to 1984 was over $5,000. We are still paying off this debt. Throughout the years I would estimate it has cost me well over $30,000 to try to get help for the emotional, mental and physical pain caused by the sexual abuse.

If there had been a law such as this proposed one, I could have sought remedy through the courts to at least recover monetary damages for what was done to me. I couldn't stop him by filing criminal charges, but at least he might have been exposed and such an action might have been a deterrent so that he would not have continued molesting as he has done.

I strongly support Senate Bill 157. Thank you.

Fay Dozier

Fay Dozier

EXHIBIT 24
DATE 3/6/89
SB 157

SB 157 - Revised Civil Statute of Limitations for Child Sexual Abuse

My name is Patricia; I am a 28 year old incest survivor. I've already submitted testimony under this same alias for SB 122 (Revised Criminal Statute of Limitations for Child Sexual Abuse) which contains a more detail version of my childhood experiences.

I was sexually abused starting before I turned 3 to 17 years of age by 6 perpetrators who were mainly family members. My family was severely dysfunctional and alcohol abuse was prominent. Unspoken family rules such as don't trust, don't feel, and don't tell were ingrained and backed up with verbal abuse and physical violence by all family members. I felt trapped and isolated. I was on my own to deal with the sexual abuse and believed I had no other choice but to submit when cornered by an abuser. When I confided in 4 different adults about my abuse I only received negative feedback that reinforced my feelings of helplessness and responsibility. When I was 17 I began a long period of alcohol and drug abuse, and became sexually promiscuous because I felt helpless against any sexual advance. Shortly after I left home at 18, I married a man who continued to sexually abuse me, and we divorced three years later. I had relied on my family for reaffirmation and acceptance until quite recently. I feel this dependency on my family prevented me from discovering the connection between my behavior and the sexual abuses.

I sought counseling at the age of 25 because I had been physically abusing my current spouse and children. In an attempt to find out why and correct it before I lost my husband and children I entered counseling and eventually an incest survivors' group. I have been in counseling ever since and have gradually discovered the connection between the repercussions I have experienced and my abuse. I believe the following repercussions are the direct result of the

combined abuses I experienced as a child: severe depressions, suicidal attempts, tendencies, and other self-destructive behaviors, alienation from peers, spouse, children, and society in general, anxiety, insomnia, inability to make decisions for myself, mistrust and fear of people, confusion, eating disorders, and a loss of personal identity. Even though they could also have been produced by the different forms of abuse individually, I feel the sexual abuse in particular intensified the repercussions dramatically. The repercussions I feel are due solely to the sexual abuses, and which especially affect my marriage are: sexual promiscuity, flashbacks to the abuses, nightmares of sexual abuse, confusion about sexuality, and shame of and disassociation from my body, and the irrational fear of being sexually abused by my husband.

I feel passage of SB 157 would provide me with an opportunity to pursue compensation for damages inflicted by those who abused me. I did not choose to be sexually abused and dealing with the damages has been, and will continue to be, a long, time consuming, and costly process. Medicaid has helped pay for my therapy and medical expenses so far, but I expect to be paying on the balance for many years. The repercussions resulting from sexual abuse are life long and also affect my spouse, children, and close friends. I have been receiving therapy since 1985 and I know that I will probably continue to need it off and on for the rest of my life. The opportunity to try to get compensation from my abusers would put responsibility where it belongs and would help relieve Medicaid and myself of its burden. I believe at least three of my abusers are still abusing children and one other is in prison due to molesting another child. Forcing them to take moral, legal, and financial responsibility would hopefully help deter them from abusing other children.

EXHIBIT 25
DATE 3/6/89
SB 157

Testimony in Support of S.B.157

Testifying: Hugh M. Black, Ph.D., Licensed Clinical Psychologist in private practice in Helena, MT

Representing: Montana Psychological Association

The Montana Psychological Association supports extending the statute of limitations for recovery of actual damages caused by sexual abuse of minors for reasons of justice and equity. It is well documented that children find it psychologically difficult to report sexual abuse in the best of circumstances because they frequently believe it is their fault, and when they do report it they are often not believed. Clinicians frequently report the debilitating effect on adults of their childhood sexual exploitation and the difficulty they have working through the trauma sufficiently to be able to go on with their lives. Frequently they are so damaged that their inner conflicts preoccupy them to the point that they are emotionally unable to support themselves and are receiving State assistance. In cases where the exploitation can be proven, this bill would shift the costs of treatment from the State (Medicaid) to the assailant. Furthermore, sexual molestors frequently continue their behavior under the hope that they will never be exposed. This bill may provide some deterrence to those predators who are capable of anticipating the future, in the knowledge that they may some day be required to make restitution.

Most people think of sexual abuse as involving young girls, but there are an increasing number of young men who are now reporting sexual abuse that occurred when they were children. In our culture it is much more difficult for male juveniles or adolescents to report this exploitation due to societal shame, as well as the reasons females find it difficult. Boys believe frequently that the exploitation happened to them because there is something abnormal about <u>them</u>, rather than the predator.

The Montana Psychological Association urges this committee and the Senate to pass this bill to further protect those citizens who need special protection, and to provide some opportunity for just redress to those who have been exploited when they were helpless. Often, the capacity to obtain redress can aid mightily in allowing an emotionally disabled person become a productive member of society.

Hugh M. Black, Ph.D.
Licensed Clinical Psychologist
License # 133 (Montana)

EXHIBIT 26
DATE 3/6/89
SB 157

Legeslative testimony for Senate Bill 157

I was sexually abused from the time I was five years old, and possibly younger, until I was twelve. The sexual, emotional, and other physical harrassment and abusive treatment was continuous. Ingrained into my psyche during these years was fear, anger, helplessness, hopelessness, the feeling that I was somehow bad, shamefull, and "dirty", worthlessness, the inability to trust, and a great sadness. I thought the abuse would last as long as I would. In fact that childhood feeling of hopelessness was in a sense very true. It has lasted my lifetime --- never leaving for a moment, and only until recently not caused an inner uprising of intense fear and anger.

When the abuse finnaly ended, the psychological traumas had begun their devestating effects. Unable to cope with the reality of my feelings about what had happened, I blocked it from my memory at about age thirteen. Throughout my teen years acceptance within my family and with my peers was made very difficult by my behavior as a confused child turning to inappropiate means of behavior in order to be noticed, heard, accepted. I was raped at age twelve. I ran away from home at age twelve. I became such a "problem child" that I was placed in a mental hospital for a time. Eventually, I withdrew, and upon reaching adulthood I found myself in control only through rigidity of standards and opinions that I'd set for myself. My family still considered me a bit confused, but I was seemingly "straightening out". In reality I'd developed a strong front to use for the world to see, because I was unable to look at the real me or to have anyone else see too deeply. By the time I reached adulthood I had thought of everything from suicide to drugs to prostitution, but fortunately never acted on any of them. Never once did it occur to me what the source of my inner agony was. I did not even remember that the sexual abuse had occured until I was 27 years old--- long after reaching majority. Even then I was unable to come to grips with the reality of it for another three years. By that time my marriage was having problems, a small business I'd begun was barely kept going, and I was an emotional wreck. In short, the controlled facade that I'd so carefully built was crumbling in the light of remembered horrors, and I was crumbling with it.

Never once during these three years that I'd remembered the abuse, did I ever consider legal action. I hated my abuser, and yet loved him too. It is a very odd thing to love someone who has been so undeniably cruel, and yet I cannot ignore that feeling. I blamed myself for what had happened, although in truth it was in no way my responsibility. It took me three years of constant therapy to even be able to write my abuser a letter stating the facts and that I was aware of them. Even after that three years, I was terrified of his and my family's reaction. He has denied it entirely, but unlike most women the majority of my family believes me. Taking this action was one of the most difficult things I've ever done. The fear that was ingrained in me as a young child should I ever dare to tell the secret certainly did not diminish in my adulthood. There is <u>no way</u> I would have had the emotional wherewithall to bring legal action against this person until only two years ago --- 14 years after I reached majority. I now have the emotional strength and the understanding of the complexity of the psycological devestation that sexual abuse causes to take action if I choose to --- but the statute of limitations is past. And so a person who has done a cruel and permanent injustice to another person will remain unscathed by his actions except within the closed doors of his family.

We must be able to trust our protection under the law. The abusive person must know there is rightful recourse for the pain and suffering he is inflicting. I believe that ability to take recourse should begin upon the victim's full understanding of the damage inflicted. The psycological effects of sexual abuse are deep and lasting. But as a child living with this and growing to adulthood I had no understanding whatsoever that my problems were due to sexual abuse. Upon even

remembering it I was too traumatized to do anything about it. It has taken years and years to learn to live with myself and the facts. Life is complex --- people are complex. The revision of the law proposed in the bills before you would recognize that complexity and preserve the rights and due process that is due each individual.

Does my abuser continue to abuse children? I do not know. But I do hope that if he has, that child will survive to adulthood and be able to reach an understanding of herself and the ramifications of his unjust behavior, and still be able to take action at whatever level she so chooses and finds not one door closed to her plea.

I urge you to listen, to understand, and to pass Senate Bills 122 and 157.

Signed,

KGF

Box 483
Florence, Mt. 59833

1/19/89

EXHIBIT 27
DATE 3/6/89
SB 157

WITNESS STATEMENT

NAME Lewis Pepus BILL NO. SB157

ADDRESS 135 11th Ave. N Shelby

WHOM DO YOU REPRESENT? Self

SUPPORT ✓ OPPOSE _____ AMEND ✓

COMMENTS: CHANGE EFFECTIVE DATE TO INCLUDE ALL INSTANCES THAT ARE CURRENTLY OPEN UNDER THE STATUTE OF LIMITATIONS

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34
Rev. 1985

Ex #27
3-6-89

Senate Bill 157 - NATHE - Revision of the statute of limitations for recovery of damages connected with child sexual abuse cases

WE, by our signatures, support SB157, and hereby request that the legislature adopts the revisions to MCA 27.2.204 as proposed by this bill.

NAME	CITY	SIGNATURE
Lewis A Peppes	Shelby	Lewis A Peppes
Patricia E. Waite	Shelby	Patricia E. Waite
Jim Kickeas	Shelby	Jim Kickeas
Maureen Peppes	Shelby	Maureen Peppes
Jerry L. Branch	Shelby	Jerry L Branch
Colby L. Branch	Shelby	Colby L Branch
MARLYS ROBERTSON	SHELBY	Marlys D Robertson
Mary Brown	Shelby	Mary Helen Brown
CORRINE MERHAR	Shelby	Corrine L. Merhar
Judith J. Nevins	Shelby	Judith J Nevins
CYNTHIA L. CRUZ	Shelby	Cynthia L Cruz
C. Duncan	SHELBY	C. Duncan
MABEL IVERSON	Shelby	Mabel Iverson
MARY Schwindt	Sunburst	Mary Schwindt
CAROLYN TOECKES	VALIER	Carolyn Toeckes
Kimberly Hayes	Shelby	Kimberly Hayes
Judy A. Robinson	Cut Bank	Judy A Robinson
Dana Shepard	Shelby	Dana Shepard
Jane A. Kindzerski	Shelby	Jane A Kindzerski
Laura A. Brown	Shelby	Laura A Brown
Ginny Porter	Shelby	Ginny Porter
JAMES B. PORTER	Shelby	James B. Porter

Ex. #27
3-6-99

Senate Bill 157 - NATHE - Revision of the statute of limitations for recovery of damages connected with child sexual abuse cases

WE, by our signatures, support SB157, and hereby request that the legislature adopts the revisions to MCA 27.2.204 as proposed by this bill.

NAME	CITY	SIGNATURE
Joseph P Pehan	Shelby	Joseph P Pehan
KELLY J. HOLTZ	Shelby	Kelly J. Holtz
VERNA M. OTIS	Shelby	Verna M. Otis
Rosemary A Battleson	Shelby	Rosemary Ann Battleson
Ronald J Migneault	Shelby	Ronald J Migneault
DAVID J HOLLINGSWORTH	Shelby	David J Hollingsworth
Doris J. Migneault	Shelby	Doris J. Migneault
Roger L Shepherd	Shelby	Roger L Shepherd
Jacqueline M. Rohlf	Shelby	Jacqueline M. Rohlf.
Charlee C Rolff	Shelby	Charlee C Rolff
James R Brunn	Shelby	
Norman O. Peterson	Shelby	—
Fern Brunn.	"	—
Emma Peterson	Shelby	—
Karen Nusore	Shelby	
Leonard M Villamor	Shelby	Jm Villamor
Julie Shepher	Shelby	Julie Shepherd
Deanna L. Hilmer	Shelby	—
MIKE SHEPARD	Shelby	Mike Shepard
Melodee Robins	Shelby	Melodee Robins
GERRY S. BARGAS	SHELBY	Gerry S Bargas
Beverly BARGAS	Shelby	Beverly L. Bargas
Carmelita Flynn	Shelby	Carmelita P. Flynn
Tom FLYNN	SHELBY	Tom Flynn
Jane Allmaras	Shelby	Jane Allmaras

Ex. #27
3-6-89

Senate Bill 157 - NATHE - Revision of the statute of limitations for recovery of damages connected with child sexual abuse cases

WE, by our signatures, support SB157, and hereby request that the legislature adopts the revisions to MCA 27.2.204 as proposed by this bill.

NAME	CITY	SIGNATURE
Eve Jacobson	Shelby	Eve Jacobson
Jay Lanius	Shelby	Jay Lanius
Lynn Pettigrew	Shelby	Lynn Pettigrew
Helen F. Bryson	Great Falls	Helen F. Bryson
Roland W. Bryson	Great Falls	Roland W. Bryson
Kenneth E. Bryson	Great Falls	Kenneth Bryson

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 157 DATE MARCH 6, 1989

SPONSOR SEN. NATHE

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Susan Kraft Ball	Self	✓	
Elizabeth Williams	Self	✓	
John Madsen	DFS	✓	
Janet R. Allison	Mont. Psych. Assoc/self	✓	
Leslie Burgess	self	✓	
ROSANNE E. DAVIS	DOJ	✓	
MARIBETH BPEOPLES	SELF	✓	
Lewis Peoples	Self	✓	
John Connor	Dept. of Justice MT County Atty Assn	✓	
Jonne Kemmis	Parents Anonymous of MT	✓	
Dennis Nicholl		✓	
Paul F. Garrison	MONTCAP	✓	
Megan Hill	MT. Catholic Conf	✓	
Holly Franz	Women's Sec State Bar	✓	
Judith Ross	self	✓	
Brenda Nordlund	MT Women's Lobby	✓	
Christie Marron	MT Council of Mental Health Centers	✓	
Rep Bill Strizich		✓	
Jane Niklas	MT Education Assoc	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Marti Adrian	Self	X
Susan Swindlehurst	NASW	X
Hal Kalcevic	DFI	X

SENATE BILL NO. 157

INTRODUCED BY NATHE, REGAN, ECK

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF CHILDHOOD SEXUAL ABUSE; AMENDING SECTION 27-2-204, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions -- general and personal injury. (1) The Except as provided in [section 2], the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

NEW SECTION. **Section 2.** Tort actions -- childhood sexual abuse. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury or condition; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury or condition was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury or condition that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section.

NEW SECTION. **Section 3.** Codification instruction. [Section 2] is intended to be codified as an integral part of Title 27, chapter 2, part 2, and the provisions of Title 27, chapter 2, part 2, apply to [section 2].

NEW SECTION. **Section 4.** Severability. If a part of

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5.** **Retroactive applicability.** [This act] applies to all causes of action commenced on or after October 1, 1989, regardless of when the cause of action arose. To this extent, [this act] applies retroactively, within the meaning of 1-2-109.

-End-